

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

Brief for Appellants, Immaculate Conception
Church of Los Angeles and Lake Congrega-
tional Church of Pasadena.

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,239

310

IMMACULATE CONCEPTION CHURCH OF LOS ANGELES
AND LAKE CONGREGATIONAL CHURCH OF PASADENA,

Appellants,

vs.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee.

No. 17,240

ELEVEN TEN BROADCASTING CORPORATION,

Appellant,

vs.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee.

On Appeal From an Order of the Federal Communications
Commission.

United States Court of Appeals
for the District of Columbia Circuit

FILED FEB 4 1963

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Appellants' Statement of Questions Presented.

1. Did the Commission in promulgating its Order directed against appellants fail to make proper findings of fact and conclusions of law as well as the reasons or basis thereof required by the Communications Act of 1934, as amended, and Sections 7 and 8 of the Administrative Procedure Act; (a) on all of the material issues tendered by appellants' pleadings and evidence; (b) on appellants regularly scheduled weekly program service and the impact and effect of the elimination of KRLA upon that program service and upon the public interest, convenience and necessity?

2. Was the Commission's order directed against appellants arbitrary, capricious and beyond its statutory authority with respect to the public interest importance of the service performed by KRLA in broadcasting the religious programs produced by appellants and with respect to the impact that the elimination of KRLA would have upon that service and upon the public interest, convenience and necessity?

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Brief for Appellants, Immaculate Conception
Church of Los Angeles and Lake Congrega-
tional Church of Pasadena.

Jurisdictional Statement.

This is an appeal filed by the Immaculate Concep-
tion Church of Los Angeles, California (hereinafter
for convenience referred to as "Catholic Church"), and

the Lake Congregational Church of Pasadena (hereinafter for convenience referred to as "Congregational Church") from a decision of the Federal Communications Commission released March 19, 1962 [R. 1244-1263], a Memorandum Opinion and Order released July 24, 1962 [R. 1545-1551] and a one and one-half page Order, likewise released on July 24, 1962 [R. 1552-1553] denying the renewal of license of Eleven Ten Broadcasting Corporation of Pasadena, California, licensee of standard broadcast station KRLA (KRLA) and the petitions for rehearing and request for oral argument filed by appellants.

Jurisdiction of this Court is invoked under Section 402(b)(6) and 402(c) of the Communications Act of 1934 as amended, 47 U. S. C. §402(b)(6) and 402(c), 66 Stat. 718 and §§7, 8 and 10 of the Administrative Procedure Act, 5 U. S. C., §§1007, 1008, 1010, 60 Stat. 237.

Statement of the Case.

This proceeding originated with the application for renewal of license of KRLA which was designated for hearing on specified issues on July 5, 1960 [R. 353-354].

Hearings were conducted in Los Angeles, California, from October 31, 1960, through November 9, 1960 [Tr. 34-1299] and at Washington, D. C. on December 22, 1960 [Tr. 1300-1319]; after which the record in this proceeding was closed.

Both appellants participated in the administrative proceedings, testifying as to their contributions to the programming of KRLA and the impact and effect of such programming on KRLA's operations and on the public interest, convenience and necessity.

Monseigneur Right Reverend Joseph J. Truxaw testified at the hearings in behalf of the Catholic Church [Tr. 81-91]. The pastor of this appellant has been associated with the Immaculate Conception Church for twenty-five years; the parish is located in downtown Los Angeles and approximately 3,500 people attend the Sunday services of this church [Tr. 82].

Since January of 1960, appellant has broadcast a weekly religious program over KRLA's facilities from 9:00 to 10:00 A.M. on Sundays. For fifteen years prior to January 1960, appellant had broadcast its services over Station KLAC [Tr. 83]. The main purpose of the broadcast was and is to bring the High Mass Service over the air to shut-ins, sanitariums, hospitals, people living at home who are invalids and those unable to attend services because they reside too great a distance from a church [Tr. 83]. KLAC broadcast this program from 8:00 to 9:00 A.M. on Sunday mornings [Tr. 83-84].

In January of 1960, appellant was advised that the time of the broadcast would be changed to the hour between 7:00 and 8:00 A.M., a time period which was unsatisfactory to appellants' listening audience because at that hour the sanitariums and hospitals would be busy attending to the wants and needs of their patients [Tr. 84]. Appellant requested a different time but KLAC refused. In addition, KLAC advised appellant that it would impose a charge for the services of a technician to assist in the broadcast. As a result of the foregoing, the Catholic Church was unable to continue with KLAC [Tr. 84].

Following the cancellation of the KLAC broadcasts, appellant received thousands of letters regretting the

fact that its listening audience would be deprived of this program [Tr. 85]. Two weeks after the program had been cancelled, KRLA approached appellant and offered the 9:00 to 10:00 A.M. time period. This was ideal for the listening audience because it came at a time after the shut-ins in the hospitals and sanitariums had their breakfast, etc. No conditions were attached by KRLA and appellant was further advised that all expenses would be absorbed by KRLA [Tr. 85-86].

This is not a routine run-of-the-mill church program; it is produced and presented with a "splendid set of trained voices"—a choir director with a choir of eight voices, an organist and a narrator for the program. The cost of the foregoing is approximately \$6,500.00 per year [Tr. 87].

As stated previously, this religious program is broadcast every Sunday [Tr. 86]. This is the only station in California and in the country which carries the High Mass regularly [Tr. 87]. In the opinion of Monseigneur Truxaw, this program is "... doing a tremendous amount of good, consolation too . . . and is a very worthwhile thing." [Tr. 86-89]. The services performed by KRLA are extremely valuable especially in view of the larger coverage afforded by the station as compared with KLAC. Appellant has received correspondence from all over California and even from ships at sea, urging the continuance of this program, thanking appellant and KRLA for carrying this program, etc. [Tr. 87-88].

On cross-examination, Monseigneur Truxaw testified that broadcasts of this type of program are worthwhile and that it would be a disservice to the public to discontinue the same [Tr. 89].

The direct and cross-examination of Monseigneur Truxaw demonstrate that the representations made to appellant by KRLA that time would be made available weekly to broadcast the "High Mass" services have been fulfilled [Tr. 81-91]. This program has been continuously on the air since January of 1960.

Raymond C. Ortlund testified at the hearings in behalf of the Lake Congregational Church of Pasadena [Tr. 172-183].

This appellant produces an hour-long live program, originating from the Lake Congregational Church on Sundays from 11:00 to 12:00 Noon [Tr. 172]. In October of 1959, KRLA informally approached this appellant and inquired whether the Congregational Church would be interested in having its services broadcast [Tr. 174]. In the early part of December, the Board of Trustees of the Church approved the arrangements for such broadcasts. Appellant commenced broadcasting its services on January 31, 1960. "The station has been very cooperative and we have been very happy, of course, to have this opportunity." [Tr. 173].

In order to make the services attractive and hold the interest of its listening audience, appellant through its pastor and others established a radio room and equipped the same with "some very fine equipment from CBS." Personnel were trained and the services were improved and "sharpened up" to insure listener acceptability [Tr. 174].

The response to the broadcast of the services has been very satisfactory. This appellant has received numerous letters from the Southern California area, commending the services although no mail solicitations

were ever made [Tr. 175-176]. The broadcast of the services has likewise had a favorable impact upon the in-church services as well; it has been "a very excellent influence" for the parishioners and the younger people who attend church, and it has contributed to the large congregations which attend services [Tr. 176-178].

Mr. Ortlund testified that to the best of his knowledge, there were no other Protestant services emanating from Pasadena from 11:00 to 12:00 Noon on Sundays on any radio station in the community except from the Pasadena Presbyterian Church which operates its own radio station [Tr. 177].

On April 21, 1961, the Commission's Hearing Examiners, James D. Cunningham and Herbert Sharfman released an initial decision approving the renewal of license but for a period of one year rather than the regular three-year term [R. 921-969]. The initial decision contained no findings of fact or conclusions of law pertaining to the religious programming of appellants other than the general statement that "Twelve public witnesses testified on behalf of Eleven Ten to the excellent services provided their organizations by KRLA." [R. 956].

Exceptions to the initial decision were filed by the Broadcast Bureau and KRLA. The Broadcast Bureau urged denial of the application for renewal of license [R. 1059-1068]. KRLA disagreed with several of the Examiners' findings but acquiesced in the grant of the short-term renewal [R. 978-1059]. In Exception No. 119, KRLA excepted to the failure of the initial decision to make detailed findings concerning the testimony of public witnesses and the present programming of KRLA as set forth in Appendix B attached

to the exceptions [R. 1015]. The foregoing Appendix is likewise printed as Appendix B to this brief.

The Appendix in addition to describing in detail the educational discussion, agricultural, etc. programming of appellants [R. 1041-1043] outlined the additional religious programming broadcast by KRLA. Thus the Rosary Hour, a 15-minute sustaining transcribed presentation by the Catholic Church is broadcast every Sunday from 8:00 to 8:15 A.M. [R. 1039]. Thought for the Day, a two-minute presentation, Monday through Saturday, inclusive, is offered from 6:15 to 6:17 A.M. [R. 1039]. The Religious News Reporter, a five-minute live presentation is broadcast each Sunday from 8:15 to 8:20 A.M. This is a summary of religious news from around the world presented by Reverend Smith of the Religious News Service [R. 1039]. Another program broadcast Monday through Saturday at 5:50 A.M. and on Sunday at 8:20 A.M. is Sound of His Music, a ten-minute religious music presentation [R. 1040].

A significant religious program, presented on Sunday mornings at 8:30 A.M. and repeated at 11:30 P.M. is Spirit of Today. This 30-minute program is produced in cooperation with the Federation of Churches of Southern California, the Los Angeles College of Jewish Studies and the Catholic Archdiocese, all of whom were contacted by KRLA beginning in November of 1959. Representatives of the participating organizations appeared in person and testified [R. 1040].

Rabbi Solomon F. Kleinman, the Western Regional Director for the Union of American Hebrew Congregation, testified that KRLA carried the program free

of charge and, in his opinion, represented a high standard of performance. He stated that the station cooperated with him "in every way, shape, and form". According to him, the type of program being broadcast by KRLA is of benefit not only to the members of the Jewish faith but to the community as a whole. Unlike the program broadcast on another Los Angeles Station (KNX) which is merely a shortened version of the religious service, KRLA attempts to interpret the message of Judaism so that it can be better understood and appreciated by the members of the entire community [R. 1040].

In order to make itself meaningful to modern listeners, the program takes the form of a series of readings and comments from Biblical and other religious material interspersed with appropriate religious music. According to Rabbi Kleinman, the majority of the radio stations in the community have never contacted his organization for the purpose of carrying programs in its behalf and only one other radio station in the area carries a regular program for the Jewish community of Southern California which encompasses approximately 500,000 people [R. 96,1040].¹

Rev. Clifton Moore, coordinator of radio and television for the Los Angeles Church Federation, testified that the program as presented by his organization calls for a few minutes of meditation, a hymn, a short talk or discussion on ethical problems, a musical number and then another short talk. Occasionally,

¹Rabbi Kleinman's organization represents the reformed branch of Judaism in its activities in the broadcast field. This organization has made arrangements to represent all branches of Judaism [Tr. 96].

two or three young people are brought in and interviewed by the clergymen about the activities of their church youth organization. His group feels that this is particularly appropriate in view of the nature of KRLA's programming which is directed to youth.

Regarding the cooperation of the station with this organization, Rev. Moore testified, "It has been very favorable. They have been most cooperative in production in all that we ask them to do" [Tr. 135]. Only two other stations in the Los Angeles area provide free radio for Los Angeles Church Federation. They are KFAC which programs to adults, because of the classical music nature of its programming, and KNX. Insofar as the timing of the program is concerned, Rev. Moore testified that repeats of the presentation met with his philosophy that church broadcasts should not compete with the time in which services are regularly held in churches, that broadcasts from 9:30 to 10:30 on Sunday are considered competition to the churches, since the ministers hope that at that time people will either be preparing to go to church or on their way to Sunday School or in Church.

A Catholic Group, Loyola University, was contacted about this program about December, 1959, or January 1960 [R. 1042].

As stated previously, the foregoing religious programming was set forth in detail in the Appendix attached to KRLA's exceptions [R. 1036-1058]. Oral argument was held before the Commission on January 18, 1962, by counsel for KRLA and by counsel for the Broadcast Bureau [R. 1320-1356].

On February 27, 1962, KRLA filed its petition to reopen the Record [R. 1229-1241]. The purpose of

this pleading was to demonstrate to the Commission the meritorious service rendered by the station since the hearing which had taken place sixteen months earlier. KRLA referred to the religious programs produced by appellants, *i.e.*, the Catholic High Mass produced by the Catholic Church and the Morning Worship Service produced by the Congregational Church. In addition, reference was made to "Spirit of Today" and the "Religious News Reporter", both of which have been described in detail previously [R. 1231-1232].

On March 19, 1962, the Commission with Commissioner Cross concurring, released its decision denying KRLA's renewal of license [R. 1244-1263].

The Commission's decision contains no findings of fact or conclusions of law pertaining to appellants' religious programming or the additional religious programming broadcast by KRLA. The only reference to such programming is the following:

"In view of this continued pattern of deception, a meritorious programming fare, which may have been presented while the disposition of its renewal application was still in doubt, does not provide any assurance that such deception would not be subsequently resumed. Under the circumstances, no useful purpose would be serviced by reopening the record to adduce evidence as to Eleven Ten's programming since the record was closed. See *Federal Communications Commission v. WOKO, supra.*" [R. 1250-1251].

The Commission summarily disposed of the exceptions pertaining to appellants' programming. In Ex-

ception 119. KRLA had excepted to the Commission's failure to make detailed findings concerning the testimony of such public witnesses as Mr. Ortlund and Monseigneur Truxaw and the present programming of the station as set forth in Exhibit B attached to the Exceptions [R. 1031]. The Commission denied this exception "as lacking specificity" [R. 1260].

Exception 104 likewise pertaining to religious programming in part is quoted in the margin.² The

²Exception 104.

"Par. 73. The failure to find that:

"As early as November, 1959, Heiman entered into conversation with representatives of religious organizations in the area looking toward the production of programs in their behalf [Tr. 927]. The occasion was the production of a program which was entitled "Spirit of Today" which embodied religious messages but was not in the nature of a religious service [T. 933-936]. This program was in response to a conversation he had with Donald Cooke in which the latter specifically called his attention to the need for development of public service programs [T. 933].

"Pursuant to these plans and conversations, Heiman contacted a number of religious groups, by letter and personally, offering them the facilities of the station and inviting their cooperation. The first program of the "Spirit of Today" was broadcast on December 5, 1959 [T. 942, App. Ex. 22, p. 1]. Conversations leading to this broadcast were held with the religious group, Pacific Bible Seminary, at least ten days to two weeks prior to the air date' [T. 942].

"In line with its representations in the transfer application (App. Ex. 11, p. 2 of application), the station in September, 1959, entered into negotiations with the March of Dimes Foundation which eventually culminated in programming for that organization [T. 74]. In October, 1959, KRLA contacted the Lake Avenue Congregational Church in connection with programs which were carried by the station beginning in January, 1960 [T. 173]. In addition, as early as June, 1959, the station carried spot announcements for the National Safety Council [T. 164]. Beginning as early as October 11, 1959, KRLA carried public service promotions for such institutions as the Boys Republic, the Fire Prevention Week, Muscular Dystrophy, Union Rescue Mission, Foster Parents, Big Brothers, Good Will Industry, Civil Air Patrol, Income Tax Information, Multiple Sclerosis, Diabetes, Cancer, Boy Scouts, National Guards,

Commission's ruling on this exception is quoted in its entirety:

"Granted in substance, except for part (a) of Exception 105 (see Par. 101 of the Findings)." [R. 1259].

KRLA filed its petition for reconsideration and/or reopening of the proceedings on April 18, 1962 [R. 1294-1387].

Appellants likewise filed petitions for rehearings requesting that the Commission rehear and reconsider its decision and order, that the latter be vacated and that KRLA's license be renewed [R. 1395-1407]. The petitions alleged substantially the same facts as heretofore set forth: that each had testified in the administrative proceedings as persons aggrieved and adversely affected if KRLA ceased its operations; both appellants alleged in detail the programming and service that it rendered and that if KRLA ceased operations, appellants' listening audience which had been built up and cultivated over a period of years would be deprived of a unique and irreplaceable program service [R. 1395-1407].

Appellants in their petitions for rehearing alleged that the Commission's decision contained no findings of facts or conclusions of law pertaining to appellants' religious programming and the other religious programming of the station and the impact and effect thereof on KRLA's listening audience. It was further alleged that the Commission in the exercise of its adjudicatory functions had failed to consider and evaluate

etc. These public service promotions were predominantly live. They were carried as often as twenty-one times a day' (App. Ex. 25, T. 1010)."

appellants' program service and its impact and effect on the public interest, convenience and necessity. Appellants likewise contended that the public service as exemplified by their programming and the contributions and cooperation rendered by KRLA in effecting that program service constituted overweening considerations in the public interest which warranted a renewal of KRLA's license [R. 1395-1407].

The Broadcast Bureau filed its opposition to appellants' petitions for rehearing [R. 1445-1449].

On or about May 22, 1962, appellants filed their reply to the Broadcast Bureau's opposition to petitions for rehearing [R. 1504-1516].

On June 13, 1962, appellants filed their request for oral argument on their petitions for rehearings and the subsequent pleadings filed in response thereto [R. 1520-1523].

On or about July 24, 1962, the Commission released its memorandum opinion and order reaffirming its previous decision which had denied KRLA its renewal of license [R. 1545-1551]. On the same day, *i.e.*, July 24, 1962, the Commission released a one and one-half page order in response to the contentions tendered by appellants' pleadings [R. 1552-1553].

The Commission made the following comments with regard to appellants' program service in its memorandum opinion and order:

"... We do not think that a meritorious program record of the scope and nature which Eleven Ten claims can outweigh this consideration. *Cf.*, *Federal Communications Commission v. WOKO, Inc.*, 329 U. S. 223 (1946). In any event, the Eleven

Ten record of operation prior to Commission inquiry—even considering its meritorious aspects (see our ruling on Eleven Ten's Exception No. 104)—does not inspire confidence. Its record subsequent to Commission inquiry does not, as we have stated, provide assurance that the applicant can be relied upon to operate its station in the public interest at times when disposition of its renewal application is not in doubt."

* * * * *

"14. Eleven ten further contends that the Commission erroneously denied its exception 119 to the 'failure of the Initial Decision to make detailed findings concerning the testimony of public witnesses and the present programming of KRLA as covered in detail in Appendix B [to Eleven Ten's exceptions]'. Appendix B consists of twenty pages of proposed findings relating to KRLA's programs and efforts on behalf of religious, charitable and educational institutions. We agree that this exception should not have been denied for want of particularity, but we reaffirm our judgment that it should be denied. In granting Eleven Ten exception 104, we took account of the substance of KRLA's public service efforts prior to the institution of Commission inquiry into the station's operation. Exception 119 seeks primarily findings on meritorious programming efforts by KRLA *after* the Commission had made it clear to the licensee that renewal of its license was in doubt. In our view, we repeat, such efforts do not constitute a reliable measure of Eleven Ten as a licensee." [R. 1550-1551].

The Commission in its one and a half page order directed against Appellants stated that in its decision of March 19, 1962, it had

“ . . . granted Exception No. 104 of Eleven Ten Broadcasting Corporation to the absence in the Initial Decision of findings as to Station KRLA's cooperation with religious organizations; and . . . That the Commission's Decision was based upon the Findings of the Initial Decision, as modified by the exceptions which were granted; and . . . That the religious programming offered by Station KRLA does not outweigh the considerations underlying the conclusions reached in the Decision (see *Federal Communications Commission v. WOKO, Inc.*, 329 U. S. 223 (1939) R. (1552).”

The Commission in its order likewise denied appellants' request for oral argument.

This appeal was filed on August 20, 1962. On August 22, 1962, KRLA also filed an appeal with this Court.

On September 27, 1962, the Commission filed its motion to dismiss this appeal on the grounds that (1) the notice of appeal was defective because it set forth no facts showing appellants' standing; and (2) that the appellants lack standing to seek review of the Commission's decision. On October 26, 1962, the appellants filed their opposition to the Commission's motion to dismiss.

By order of this Court, dated November 21, 1962, both appeals were consolidated; the Court likewise ordered the Commission's motion to dismiss to be held in abeyance pending a hearing of these cases on the merits.

Statutes and Regulations.

The following statutes and regulations are involved:
Section 8(b) of the Administrative Procedure Act:

“(b) SUBMITTALS AND DECISIONS.—
Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.” 5 U. S. C. §1008(b), 60 Stat. 237.

Section 1.157(b) of the Federal Communications Rules:

“(b) The final decision shall contain: (1) Findings of fact and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record; (2) Ruling on each relevant and material exception filed; and (3) The appropriate rule or order and the sanction, relief or denial thereof.” 47 C. F. R. §1.157(b) (1958).

Statement of Points.

I.

The Commission's Orders and Decisions are invalid and contrary to law in that they gave no consideration to appellants' religious programming and the impact and effect of the elimination of KRLA upon that program service and upon the public interest, convenience and necessity.

(a) The Commission gave no factual consideration to appellants' religious programming and the impact and effect of the loss of that programming upon the public interest, convenience and necessity.

(b) The Commission's refusal to consider appellants' religious programming is arbitrary, capricious, invalid and contrary to the standard of public interest, convenience and necessity and the established precedents and policies of the Commission.

II.

The Commission's Orders and Decisions are invalid and contrary to law in that they do not contain the necessary findings of fact, conclusions of law and intelligible rulings on exceptions as required by the Communications Act of 1934 as amended and Section 8 of the Administrative Procedure Act on all of the material issues tendered by appellants' pleadings and evidence.

Summary of Argument.

A careful reading of the initial decision and the decisions and orders released March 10, 1962 and July 24, 1962, discloses that the Commission, in the exercise of its adjudicatory functions, gave no factual con-

sideration to the religious programming of appellants broadcast over KRLA, and the impact and effect of the elimination of KRLA upon that program service and upon the public interest, convenience and necessity. Exception 119 and Appendix B attached thereto contain findings of fact and conclusions of law describing in detail appellants' religious programming. The foregoing findings of fact and conclusions of law are not reflected in the text of the decision; and, in the form of an exception, they were "denied as lacking in specificity." The Commission's memorandum opinions and orders of July 24, 1962, do not rectify this error. The Commission reaffirms its denial of Exception 119 and Appendix B but claims that it took into account appellants' religious programming and the other public service programming of KRLA when it granted Exception 104. The grant of Exception 104 has no decisional significance since it contains no findings of fact or conclusions of law pertaining to appellants' unique distinctive and uncommon religious programming. Similarly, the Commission's one and a half page order in response to appellants' contentions is eloquently silent on the findings of fact and conclusions of law called to the Commission's attention in the administrative proceedings before the Commission by appellants.

In refusing to consider appellants' religious programming, the Commission abrogated and repudiated its responsibility in the public interest. Appellants who have achieved the status of persons aggrieved

and adversely affected may likewise vindicate the public interest. This public interest is reflected in appellants' weekly religious programs broadcast over KRLA to a listening audience running into the thousands. The standard of public interest, convenience and necessity requires that the Commission consider the foregoing factors as a matter of law in the discharge of its statutory duties. The case law implemented by policy pronouncements reinforces appellants' contention that the religious programming broadcast by a licensee is a factor which is relevant to the public interest. In the case at bar, we are dealing with religious programming of a "superior and uncommon nature" and one which offers a "most convincing showing of excellent service of long duration in the public interest." *Re Westinghouse Broadcasting Company*, 22 R. R. 1023 (1962); *Re Spartan Radiocasting Co.*, 33 F. C. C. 765, 21 R. R. 101 (1962). In the *Westinghouse* and *Spartan* cases, the Commission balanced the history of antitrust involvement and the willful, calculated and deliberate misrepresentations, respectively, as they reflected on applicants' characters against the broadcast record of both stations. Whatever derelictions may have been committed by personnel employed by KRLA, the Commission refused to give any comparative consideration to appellants' religious programming. The case law demonstrates that appellants are entitled to at least a threshold comparative determination of public interest considerations, exemplified by their religious programming as against the purported and alleged derelictions

of KRLA. The refusal to apply *Westinghouse, Spartan* and the other case law of the Commission is obviously discriminatory. The Commission relies on *F. C. C. v. WOKO, Inc.*, 326 U. S. 223 (1946), to reject on a non-comparative basis appellants' outstanding and distinctive religious programming. In the *WOKO* and other cases involving the termination of licenses of existing stations, the program service did not measure up or compare to the superior and uncommon programming of appellants. Furthermore, the *WOKO* case does not foreclose judicial scrutiny of public interest considerations in reviewing administrative action denying a renewal of license. In applying the *WOKO* case, the Commission has not adopted a blanket policy of disqualifying a licensee without considering the public interest factors. On the contrary, the Commission exercises its administrative discretion on a case-to-case basis evaluating and weighing the alleged derelictions against the public interest considerations. In refusing to apply the foregoing policy, the Commission discriminated against the appellants. In rejecting Exception 119 and Appendix B, the Commission failed to discharge its statutory duty of considering all aspects of the standard of public interest, convenience and necessity.

The various orders and decisions published by the Commission demonstrate that they contain no findings of fact, conclusions of law and intelligible rulings on relevant exceptions as required by Section 8 of the

Administrative Procedure Act and the Commission's rules and regulations. The Commission again relies in the *WOKO* case to dispense with the requirement of findings of fact and conclusions of law. The legislative history of section 8(b) of the Administrative Procedure Act, quoted in the appendix to this brief indicates clearly that the Commission is required to render findings and conclusions on all material issues tendered by the pleadings. The holding in *WOKO* does not militate against this conclusion and assuming *arguendo* that it does, section 8(b) of the Administrative Procedure Act become law after the Supreme Court handed down its decision in *F. C. C. v. WOKO, Inc., supra*. The status which Congress has conferred upon appellants to vindicate the public interest requires the rendition and administrative consideration of findings of fact and conclusions of law. Appellants' standing both before the Commission and in the courts must be defined in terms of findings and conclusions. The Commission's refusal to reflect the foregoing nullifies appellants' rights of appeal and the rights and remedies secured by the Administrative Procedure Act.

ARGUMENT.

I.

The Commission's Orders and Decisions Are Invalid and Contrary to Law in That They Gave No Consideration to Appellants' Religious Programming and the Impact and Effect of the Elimination of KRLA Upon That Program Service and Upon the Public Interest, Convenience and Necessity.

- (a) The Commission Gave No Factual Consideration to Appellants' Religious Programming and the Impact and Effect of the Loss of That Programming Upon the Public Interest, Convenience and Necessity.

The appellants in this case are eleemosynary religious organizations who have been aided and helped in their endeavors by KRLA. Their interest in this proceeding is selfless and altruistic—both churches seek the continued operation of KRLA because of the public service which the appellants and KRLA render the community.

The appellants do not propose to become involved in the issues vis-a-vis the Commission and KRLA, except to the extent that the latter may have a bearing on the so-called public interest issues.

A careful reading of the initial decision [R. 921-969] and the decisions and orders released March 10, 1962, and July 24, 1962 [R. 1244-1263; 1545-1553], discloses that the Commission in the exercise of its adjudicatory functions gave no factual consideration to the religious programming of appellants and of KRLA and the impact and effect of the elimination of KRLA upon that program service and upon the public interest, convenience and necessity.

The only reference to appellants' testimony contained in the initial decision was the general allegation that twelve public witnesses had testified on behalf of Eleven Ten to the excellent services provided their organizations by KRLA [R. 956].

The Commission's decision of March 19, 1962 makes no reference whatsoever to the unique and distinctive religious programs produced by appellants [R. 1244-1251].

Two of the Commission's rulings on the exceptions to the initial decision warrant comment. The Commission granted the substance of Exception 104 previously quoted in the margin at page 11. This testimony demonstrated that a representative of KRLA had entered into conversations with representatives of religious organizations looking toward production of programs in their behalf [R. 1025]. Thus, the foregoing conversations culminated in the broadcast of "Spirit Today", a half-hour program rotated among the Protestant, Jewish and Catholic faiths [R. 1025]. The Commission, in granting the substance of Exception No. 104, acknowledged the fact that in October of 1959, KRLA had contacted the Congregational Church in connection with programs carried by the Station, commencing in January of 1960 [R. 1025, 1259].

The grant of the foregoing exception is meaningless since it does not reflect appellants' testimony. More importantly, the Commission attached no decisional significance in granting the same. See *Radio Station KFH Co. v. F. C. C.*, 101 U. S. App. D. C. 164, 247 2d 570 (1957).

The Commission's ruling on Exception No. 119—the testimony of the public witnesses including appellants' witnesses—is extremely significant. All of appellants' evidence, which had been reduced to findings of fact and conclusions of law and which described in particularity the program service and its impact and effect on the community, was “denied as lacking in specificity” [R. 1260].

The conclusion is therefore warranted that the Commission did not weigh or consider appellants' religious programming; it was deliberately and completely ignored in the decisional process. *Cf. Saginaw Broadcasting Co. v. F. C. C.*, 68 App. D. C. 282, 96 F. 2d 554 (1938).

The Commission's memorandum opinion and order of July 19, 1962 [R. 1545-1553] do not cure this jurisdictional and statutory defect.

The Commission admits “. . . that this exception should not have been denied for want of particularity, but we reaffirm our judgment that it should be denied [R. 1551].³ The Commission then attempts to explain away its second refusal to weigh and consider appellants' programming with the erroneous conclusion that appellants' programming was initiated after the

³In its official opinion, published by the Commission in 33 F. C. C. 92, at 97 (1962), paragraph 14 of the Commission's memorandum opinion and order of July 24, 1962, consists of the following text which is not reflected in paragraph 14 of the aforesaid opinion certified to this Court: “Eleven Ten further contends that the Commission erroneously denied KRLA's Exception 119 as lacking specificity. We affirm that ruling, since the requested findings are set forth in such exhausting detail as to be imprecise.” This discrepancy reinforces appellants' contention that Exception 119 and Appendix B were not considered by the Commission.

Commission made it clear to KRLA that the latter's renewal of license was in jeopardy [R. 1551]. This conclusion is flatly contradicted and impeached by the evidence summarized in the margin.⁴ To paraphrase from the *Saginaw* case, *supra*, this substantiates appellants' contention that the evidence proffered was not weighed either as to its accuracy or credibility; nor was attentive consideration given this evidence so that a determination of facts of a basic or underlying nature could be reached. See also *Tri-State Broadcasting Co. v. F. C. C.*, 68 App. D. C. 292, 96 F. 2d 564 (1938).

Similarly the Commission's one and a half page order did not weigh or consider appellants' programming [R. 1552-1553]. This order lacks

"... the simplicity and clearness through which a halting impression ripens into reasonable certitude. In the end we are left to spell out, to argue, to choose between conflicting inferences. Something more precise is requisite in the quasi-judicial findings of an administrative agency. . . . We must know what a decision means before the duty becomes ours to say whether it is right or

⁴Mr. Ortlund testified that the Congregational Church had been approached by a representative of KRLA in October of 1959 [Tr. 174] which was almost two months prior to December 16, 1959, the date that the Commission addressed a Section 309(b) letter to KRLA concerning its program proposals [R. 189-191]. Monseigneur Truxaw testified that KRLA offered its facilities within two weeks after its High Mass program had been cancelled by KLAC [Tr. 84-85]. The good faith and cooperation between the Catholic Church and KRLA as exemplified by Monseigneur Truxaw's testimony impeaches the Commission's conclusion that the religious programming of this appellant was initiated because KRLA feared its renewal of license was in doubt [Tr. 81-91].

wrong." *United States v. Chicago M. St. P. & P. R. R.*, 294 U. S. 499, 510-511 (1935); *Secretary of Agriculture v. United States*, 347 U. S. 645, 654 (1954); *S. E. C. v. Chenery Corp.*, 332 U. S. 194 (1947).

The Commission, in its order, alleged that in granting Exception No. 104, it considered KRLA's cooperation with religious organizations. But the grant of this exception has no decisional significance; Exception 104 contains no findings of fact or conclusions of law pertaining to appellants' unique, uncommon and distinctive religious programming. This is spelled out in Exception 119 and Appendix B, but no reference is made to the foregoing in the Commission's one and a half page order.

The Commission finally alleges that "the religious programming offered by Station KRLA does not outweigh the considerations underlying the conclusions reached in the Decision (See *Federal Communications Commission v. WOKO, Inc.*, 329 U. S. 223 (1939) . . . [R. 1553])". This conclusion perpetrates the same error previously discussed. The phrase "religious programming" presumably refers to the religious cooperation mentioned in Exception 104. The reference to the "Decision" can only mean that the Commission in reaffirming its denial of Exception 119 and Appendix B gave no factual consideration whatsoever to appellants' religious programming and the impact and effect of the loss of this programming upon the public interest, convenience and necessity.

- (b) The Commission's Refusal to Consider Appellants' Religious Programming Is Arbitrary, Capricious, Invalid and Contrary to the Standard of Public Interest, Convenience and Necessity and the Established Precedents and Policies of the Commission.

The philosophic basis of the Communications Act of 1934 as amended recognizes that appellants as persons aggrieved or adversely affected may invoke the judicial machinery of the Courts to vindicate the *public interest*, although no personal substantive rights of appellants have been or would be invaded. *Associated Industries v. Ickes*, 134 F. 2d 694 (2d Cir. 1943); *City of Pittsburgh v. Federal Power Commission*, 99 U. S. App. D. C. 113, 237 F. 2d 741 (1956). This public interest is reflected in the weekly religious programs produced by appellants and broadcast over KRLA to a listening audience running into the thousands and that these programs are unique, distinctive and uncommon in the Los Angeles metropolitan area [Tr. 81-91; 172-183].

Administrative action which would remove KRLA from the air would silence appellants' weekly religious programs to the detriment of this vast listening audience. In exercising its adjudicatory functions vis-a-vis the public interest, the Commission must consider the desirability and necessity of appellants' religious programming, whether any other radio stations in Southern California can furnish appellants and their vast listening audiences with a comparable weekly schedule, time period and coverage as KRLA, etc. The Com-

mission gave no consideration whatsoever to any of the foregoing factors, their impact and effect on the public interest measured particularly in terms of appellants' vast listening audiences when it rejected appellants' religious programming out-of-hand.

The religious programming broadcast by a licensee is a factor which is relevant to the public interest. Obviously, the weekly religious programs broadcast by appellants constitute a unique and distinct service in the public interest. Religious programs are a *sine qua non* on competing applications for new facilities and on applications for renewal of license. See *Re Sucesion Luis Pirallo-Castellanos, et al.*, 26 F. C. C. 109, 16 R. R. 113 (1959); *Re Commission Policy on Programming*, 20 R. R. 1901 (1960). The foregoing represent a significant element of the public interest going to the ability of KRLA to render the best practicable service to the community. Thus, this religious programming representing as it does appellants' contributions to the broadcast record of KRLA is of a "superior and uncommon nature" and offers a "most convincing showing of excellent service of long duration in the public interest." *Re Westinghouse Broadcasting Company*, 22 R. R. 1023 (1962). In this case, the Commission renewed the licenses of the broadcast subsidiaries of the Westinghouse Electric Corporation despite convictions for criminal conduct in fixing prices, rigging bids and dividing the market on electrical equipment. Despite the gravity of the foregoing offenses and Westinghouse's long history of anti-trust involvement, the broadcast licenses were renewed because of the "superior and uncommon nature of the Westinghouse broadcast record."

The philosophic basis of the Commission's opinion in the Westinghouse case is reflected in the following paragraph:

"16. We are thus faced with a difficult choice between two conflicting considerations—a most serious reflection on applicant's character and a most convincing showing of excellent service of long duration in the public interest. If our function were to impose additional punishment for such gross violations, the decision would be easy. But that is not our function. The Commission's responsibility is in the public interest in the broadcast field. We have balanced the two considerations in the light of this responsibility and have determined to resolve the conflict in favor of renewal because of the outstanding nature of the Westinghouse's contribution to the public interest in broadcasting. We find, therefore, that the broadcast record of Westinghouse does constitute sufficient 'countervailing circumstances' to warrant renewal of license."

To quote again from the *Westinghouse* case. "The Commission's responsibility is the public interest in the broadcast field." In the case at bar the Commission has unequivocally refused to give any consideration whatsoever to the public service contributions of appellants, as reflected in their weekly religious programming. This is an abrogation and repudiation of the Commission's responsibility in the public interest. See *Michigan Consolidated Gas Co. v. Federal Power Commission*, 108 U. S. App. D. C. 409, 283 F. 2d 204 (1960).

As this Court stated in *Democrat Printing Co. v. F. C. C.*, 91 U. S. App. D. C. 72, 75, 202 F. 2d 298 (1952):

“If the requirements of the public interest are to be satisfied, the Commission must consider not only the public benefit from the operation of the . . . station, but also any public loss which it might occasion. Only by such a balancing can the Commission reach a legally valid conclusion on the ultimate question of the public interest.”

The Commission presumably relies on the *WOKO* case, *supra*, to completely disregard and ignore the “superior and uncommon nature” of appellants’ programming. *Re Westinghouse Broadcasting Company, supra*. But the Supreme Court did not pass upon the precise issue tendered by this appeal. In addition, it left open the question as to the extent to which the Commission must consider the public interest in denying an application for renewal of license.

In the case at bar, we are dealing with programming which is of a “superior and uncommon” nature. In the *WOKO* case, *supra*, the Supreme Court referred to the “adequate service” of the licensee. In the *WORL* case (*Re Broadcasting Service Organization*, 3 R. R. 979, 993 (1947)), the Commission described the licensee’s programming as a “satisfactory broadcasting service”. In none of the cases wherein the Commission terminated the license of an existing station was the program service characterized as “unique”, “outstanding”, “superior” or “uncommon”. See *Independent Broadcasting Co. v. F. C. C.*, 89 U. S. App. D. C. 396, 193 F. 2d 900 (1951); *Re Oil City Broadcasting Co.*, 7 R. R. (1951); *Re Leo Joseph Theriot*,

32 F. C. C. 599, 22 R. R. 237 (1962); *Re Palmetto Broadcasting Co.*, 33 F. C. C. 250, 23 R. R. 483 (1962).

As stated previously, in the *WOKO* case, *supra*, the Supreme Court did not foreclose judicial scrutiny of public interest considerations in reviewing administrative action denying a renewal of license. As the Supreme Court stated at 329 U. S., at page 229:

"It may very well be that this Station has established such a standard of public service that the Commission would be justified in considering that its deception was not a matter that affected its qualifications to serve the public. But it is the Commission, not the Courts, which must be satisfied that the public interest will be served by renewing the license."

The Commission in applying the *WOKO* case, *supra*, has not adopted an inflexible rule absolutely disqualifying a licensee without considering the public interest or other factors, such as the nature and character of the misrepresentations. The cases listed in the margin⁵ confirm the Commission philosophy—that it will exercise its administrative discretion on a case-to-case basis, evaluating and weighing the alleged derelictions against the "other factors pointing toward, rather than away from, public interest" *Hall v. F. C. C.*, 103

⁵*Re City Cabs Inc. v. F. C. C.*, 107 U. S. App. D. C. 136, 275 F. 2d 165 (1960); *Re Palm Springs Translator Station, Inc.*, 27 F. C. C. 438, 17 R. R. 1263 (1959); *Re Jane A. Roberts*, 29 F. C. C. 141, 18 R. R. 905 (1960); *Re Fayetteville Broadcasting Co. Inc.*, 28 F. C. C. 403, 19 R. R. 1451 (1960); *Re Mark Twain Broadcasting Co.*, 29 F. C. C. 1313, 21 R. R. 238 (1960); *Re Queen City Broadcasting Co.*, 26 F. C. C. 11, 15 R. R. 645 (1959); *Re W. J. R., The Goodwill Station Inc.*, 25 F. C. C. 196, 16 R. R. 321 (1958).

U. S. App. D. C. 248, 257 F. 2d 626 (1958). The Commission is guided by the same case-to-case philosophy in determining whether the violation of a federal, state or local law would disqualify an applicant on "character" grounds for radio or television facilities. The Commission has refused to adopt a blanket policy which would absolutely disqualify applicants for radio facilities where they are found to have violated a federal law or which would attempt to specify the exact weight or significance to be given by the Commission to such violations. Such evaluations are to be made on a case-to-case basis in the light of the specific facts involved in and related to the violation. *Re Report On Uniform Policy As to Violations By Applicants of Laws of The United States*, 3 R. R. 91:495 (1951). See also *Re Radio Montgomery Inc.*, 22 R. R. 422 (1961); *Re Wireline Radio Inc.*, 23 R. R. 647 (1962).

The *Westinghouse* case, discussed *infra*, demonstrates the administrative discretion exercised by the Commission when it balanced convictions for criminal conduct and antitrust involvement as against the "superior and uncommon nature of the Westinghouse broadcast record".

A decision equally as significant as *Westinghouse* and one which cannot be reconciled with the instant case is *Re Spartan Radiocasting Co.*, 33 F. C. C. 765, 21 R. R. 101 (1962). This case has been before this Court on three occasions, *sub nom Greenville Television Co. v. F. C. C.*, 95 U. S. App. D. C. 314, 221 F. 2d 870 (1955); *Hall v. F. C. C.*, 99 U. S. App. D. C. 86, 237 F. 2d 567 (1956); *Hall v. F. C. C.*, 103 U. S. App. D. C. 248, 257 F. 2d 626 (1958). The primary issue before the Commission was whether Spar-

ton's past broadcast record excused its "calculated, deliberate and not insignificant" misrepresentations of material facts.

The mandate from this Court in 103 U. S. App. D. C. 248, 257 F. 2d 626, authorized the Commission to consider Spartan's past broadcast record. On remand the Commission weighed the licensee's broadcast record against the derelictions charged and concluded "that Spartan's overall record, particularly for reliability and candor was such as to overcome any presumption of disqualification flowing from the misrepresentation found by the court of appeals" 21 R. R. 102(d). In paragraph 17 of the *Spartan* opinion the Commission detailed the excellent cooperation and assistance extended by the licensee to local religious, educational, charitable, and civic organizations,

"Its local religious programming includes a daily invocation presented by a local minister and a live church service on Sunday. . . . Numerous civic, educational, religious, and cultural leaders of Spartanburg have testified herein of the cooperation extended by the Spartan stations to community organizations and activities. The Spartan record of operation bespeaks an unusual awareness of and responsiveness to community needs, and is such that it strongly overcomes the necessarily adverse conclusions flowing from its sole misrepresentation." (21 R. R. 102g-102f).

Spartan is significant for several reasons. The Commission in exercising its administrative discretion made a comparative determination of public interest considerations as against calculated, deliberate and "not insig-

nificant misrepresentations.” More importantly, the Commission weighed and considered a broadcast record which had been compiled during the pendency of litigation. The Commission rejected appellants’ programming because it had concluded erroneously that such programming had been initiated after the Commission made it clear that KRLA’s renewal of license was in jeopardy. A substantial part, if not all of *Spartan’s* commendable broadcast record occurred *per litem motam*.

The administrative philosophy as exemplified by the case law indicates that in any renewal proceedings whether based on misrepresentations or violations of law, the Commission must as a matter of law consider the program service and the other factors pointing toward the public interest against the derelictions charged. *Re Westinghouse Broadcast Co., Inc., supra; Hall v. F. C. C., supra*. There must be at least a threshold comparative determination of public interest considerations versus derelictions. The Commission never made this threshold comparative determination. It never weighed, let alone considered even as a preliminary matter, the public interest factors as exemplified by appellants’ religious programming as against the purported and alleged derelictions of KRLA. In rejecting Exception 119 and Appendix B, the Commission frankly admits that it gave no consideration whatsoever to appellants’ unique and distinctive religious programming and the loss which the public would sustain by being deprived of this program service.

The appellants have invoked the jurisdiction of this Court to vindicate the public interest. That public interest is measured for the most part, by the vast listening audiences who listen to appellants' distinct, and unique programming. The public interest is nullified when the Commission rejects out-of-hand on a non-comparative basis, appellants' religious programming.

Finally, if the rule of law has any significance for the administrative process, the Commission is precluded from applying policies in the case at bar which discriminates against appellants. *Yick Wo v. Hopkins*, 118 U. S. 356 (1886); *N.R.L.B. v. Mall Tool Co.*, 119 F. 2d 700 (7th Cir. 1941); *N.L.R.B. v. Atkinson Co.*, 195 F. 2d 141 (9th Cir. 1952); *The Westinghouse* and this case are not only irreconcilable but more importantly, the Commission has failed to articulate the grounds and the reasoning which justify such abrupt changes in policies enunciated in the *Westinghouse* and prior and subsequent cases. See also *Re Sunland Broadcasting Co.*, 6 R. R. 1053 (1951); *Re The Northern Corporation*, 5 R. R. 673 (1950); *Re Westinghouse Broadcasting Co.*, *supra*; *Re Spartan Radiocasting Co.*, *supra*; *Cf. S. E. C. v. Chenery Corporation*, 318 U. S. 80 (1943); 332 U. S. 194 (1947).

II.

The Commission's Orders and Decisions Are Invalid and Contrary to Law in That They Do Not Contain the Necessary Findings of Fact and Conclusions of Law and Intelligible Rulings on Exceptions as Required by the Communications Act of 1934 as Amended and Section 8 of the Administrative Procedure Act on All of the Material Issues Tendered by Appellants' Pleadings and Evidence.

The previous argument clearly demonstrates that the Commission refused to consider either factually or as a matter of law, the religious programming of appellants. Obviously the decisions and orders of the Commission contain no

“ . . . (1) findings and conclusions, as well as the reasons or basis therefor, upon all material issues of fact, law or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief or denial thereof.” Administrative Procedure Act §8(b).

The Commission likewise gave no factual or legal consideration to the exceptions which are relevant to this issue. As stated previously, the grant of Exception 104 has no decisional significance. Exception 119 and Appendix B have, but they were rejected out of hand without any consideration by the Commission.

Section 1.157(b) of the Commission's rules provides that the final decision shall contain a “ . . . Ruling on each relevant and material exception filed; and (3) the appropriate rule or order and the sanction, relief or denial thereof”, 47 C. F. R., §1.157(b) (1953). The foregoing is declaratory of Section 8(b) of the Administrative Procedure Act which provides in part that

"the record shall show the ruling . . . upon each such . . . exception presented." 5 U. S. C. A. §1008(b).

Both Section 1.157(b) of the Commission's rules and section 8(b) of the Administrative Procedure Act further require that the Commission spell out the reasons or basis of its rulings on exceptions. This was confirmed by this Court in *Radio Station KFH Company v. F. C. C.*, 101 U. S. App. D. C. 164, 166, 247 F. 2d 570 (1957), when it admonished the Commission that:

"Though a specific ruling on each minor exception is not indispensable, the parties and the Court should not be left to guess, with respect to any material issue, or to any group of minor matters that may have cumulative significance, which of several alternatives the Commission had in mind. *It should make the basis of its action reasonably clear.* We cannot find that it did so here. Its statement of reasons comes to little more than this: For one reason or another, all the exceptions not granted are overruled. This Court must therefore remand the case to the Commission."

In the case at bar, the basis of the Commission's action on the relevant exceptions has not been expressed with reasonable clarity. Cf. *United States v. Chicago M. St. P. & P. R.R.*, 294 U. S. 499, 510-511 (1935); *Colorado-Wyoming Gas Co. v. F. P. C.*, 324 U. S. 626 (1945); *S. E. C. v. Chenery Corp.*, 318 U. S. 80 (1943); *S. E. C. v. Chenery Corp.*, 332 U. S. 194 (1947); *Secretary of Agriculture v. United States*, 347 U. S. 645 (1954).

In the instant case, the Commission concluded that findings of fact and conclusions of law on appellants'

programming were unnecessary because it had disqualified KRLA as a licensee because of the latter's alleged deceptive conduct. This holding warrants re-examination against the legislative history of the Administrative Procedure Act; and it is also challenged by appellants' status as persons aggrieved to vindicate the public interest. *Scripps-Howard Radio Inc. v. F. C. C.*, 316 U. S. 4 (1942); *Associated Industries v. Ickes*, *supra*.

The Commission has also taken the position that if its findings on one issue are determinative, it need not render findings and conclusions on the other issues tendered by the proceeding. *Re Deep South Broadcasting Co.*, 14 R. R. 1028, 1032 (1959). This conclusion was affirmed in *Deep South Broadcasting Co. v. F. C. C.*, 19 R. R. 2063, 107 U. S. App. D. C. 384, 278 F. 2d 264 (1960), wherein this Court held:

"The second alleged procedural irregularity is the Commission's failure to make findings and conclusions upon 'other issues' even though it determined that the application must be denied on the grounds that appellant was financially unqualified. Section 8(b) of the Administrative Procedure Act upon which appellant relies contains no such requirement. An agency like a court, need not decide questions which are not relevant to its decision."

In the *WOKO* case (80 U. S. App. D. C. 333, 153 F. 2d 623 (1946)), this Court reversed the Commission and among its grounds for reversal was the Commission's failure to make findings and conclusions on past performance which was regarded as material in the overall determination of the public interest. On ap-

peal, the Supreme Court referred specifically to this Court's ruling that "... the Commission should have made findings with respect to the quality of the station's service in the past and its equipment for good service in the future." 329 U. S. at 228. The Supreme Court left the foregoing issue open, although it reversed this Court and affirmed the denial of WOKO's renewal of license.

It is respectfully submitted that in a proceeding for renewal of license, the Commission is required by the Administrative Procedure Act to make findings of fact and conclusions of law on all material issues tendered by appellants' pleadings. The holding in the *WOKO* case does not militate against the foregoing conclusion; and *assuming arguendo* that it does, the Administrative Procedure Act became law after the Supreme Court handed down its decision in *WOKO*.

The Supreme Court rendered its opinion in the *WOKO* case on December 9, 1945. The Administrative Procedure Act was approved June 11, 1946; Sections 7 and 8 became effective December 11, 1946. *Administrative Procedure Act* §12.

The legislative history of Section 8(b) of the Administrative Procedure Act, quoted and summarized in the Appendix indicates clearly that findings and conclusions similar to those set forth by appellants in the Statement of the Case *infra* at page 2, are required on all relevant issues presented by the record; and that such relevant issues likewise extend to matters of administrative discretion as well as of law and fact. See Davis, *Administrative Law*, Section 16.02, page 438 (1959).

Congressman Walter was Chairman of the House Committee which reported out the bill which subse-

quently became the Administrative Procedure Act. His explanation of Section 8(b) on the floor of the House reflect the intent of Congress in enacting this legislation:

“The purpose and effect of these provisions are clear upon the face of the section. One matter should be emphasized. Section 8(b) requires findings and conclusions to be stated upon all the material issues of fact which the parties may present. This means that, within the legal framework of the type of case involved, the number and the subjects of the findings and conclusion will be determined by the record and by the legal, factual, or discretion issues raised by the parties. The mere parroting of findings or conclusions in the words of statutes, however sufficient that may be as an ultimate conclusion, definitely would not satisfy in any manner the requirements of this section unless both the statute and the issue were very narrow indeed. Almost any case of consequence involves numerous and detailed issues of law, fact, and discretion. These must all be determined as a part of the decision. Only in that manner are the parties protected and assured that the case has been fully and completely considered and determined.”

Section 8(b) is mandatory. The Commission's decision must reflect findings of fact and conclusions of law upon all of the material issues of the case presented by the parties. The Commission's order and decisions in the case at bar are eloquently silent on the issues tendered by appellants' religious programming.

This Court's holding in *Deep South Broadcasting Co. v. F. C. C.*, *supra*, that “An agency like a court, need not decide questions which are not relevant to its

decision," can be distinguished on the ground that appellants' religious programming is an issue which is relevant to the Commission's decision.

This relevancy is further demonstrated by the status which both appellants have achieved to vindicate the public interest not only before the Commission (*Camden Radio Inc. v. F. C. C.*, 94 U. S. App. D. C. 312, 316, 220 F. 2d 191, 194 (1954); *Metropolitan Television Co. v. F. C. C.*, 95 U. S. App. D. C. 326, 327, 221 F. 2d 879 (1955)), but also in this Court. *Philco Corporation v. F. C. C.*, 103 U. S. App. D. C. 278, 257 F. 2d 656 (1958).

Appellants' standing to invoke the administrative and judicial procedures prescribed by Congress can only be delineated in terms of the findings of fact and conclusions of law proffered by appellants and as exemplified by Appendix B attached to Exception 119. The Commission cannot abrogate the statutory rights conferred upon appellants to vindicate the public interest by refusing to consider the contentions advanced by appellants.

Appellants' status (and it encompasses their vast listening audience) before the Commission and the Courts is independent of KRLA. That status is defined and measured in terms of findings of fact and conclusions of law and the issues tendered by such findings and conclusions. The administrative decisional process must reflect attentive consideration to the contentions proffered by appellants. The Commission's refusal to reflect the detailed findings of fact and conclusions of law pertaining to appellants' religious programming nullifies appellants' rights of appeal and the rights and remedies secured by the Administrative Procedure Act.

Conclusion.

The record in this case sets forth not only the scope, extent and manner of appellants' religious programming but more importantly it demonstrates the co-operation achieved between KRLA and both churches.

The elimination of KRLA would destroy this religious programming which has been so assiduously cultivated over the past three years. There is no assurance and it is extremely doubtful that either or both of the appellants could effect similar arrangements with another station in the community assuring them a weekly religious program, at the same time, with equivalent coverage and the same cooperation.

Whatever transgressions may have been committed by KRLA, and they could not have been that evil or that corrupt to warrant KRLA's complete elimination from the broadcast scene, those transgressions should at least be weighed against the religious programming of appellants and its impact upon the public interest. This the Commission failed and refused to do; and its decisions do not reflect the findings of fact and conclusions of law on appellants' programming nor do its decisions give any consideration or evaluation to such programming.

Appellants as religious eleemosynary institutions, believe that the public interest would be more effectively served by the continued operation of KRLA than by its elimination from the broadcast scene.

Respectfully submitted,

HARRY P. WARNER,

Attorney for Appellants.

APPENDIX A.

(The following extracts are from S. Document No. 248, 79th Congress, 2d Session, Administrative Procedure Act, Legislative History.)

S. Rept. No. 752 which accompanied S. 7, 79th Cong. 1st Sess. at pp. 210-211:

"The requirement that the agency must state the basis for its findings and conclusions means that such findings and conclusions must be sufficiently related to the record as to advise the parties of their record basis. Most agencies will do so by opinions which reason and relate the issues of fact, law and discretion. Statements of reasons, however, may be long or short as the nature of the case and the novelty or complexity of the issues may require.

"Findings and conclusions must include all the relevant issues presented by the record in the light of the law involved. They may be few or many. A particular conclusion of law may render certain issues and findings immaterial, or vice versa. Where oral testimony is conflicting or subject to doubt of its credibility, the credibility of witnesses would be a necessary finding if the facts are material. It should also be noted that the relevant issues extend to matters of administrative discretion as well as of law and fact. This is important because agencies often determine whether they have power to act rather than whether their discretion should

be exercised or how it should be exercised. Furthermore, without a disclosure of the basis for the exercise of, or failure to exercise, discretion, the parties are unable to determine what other or additional facts they might offer by way of rehearing or reconsideration of decisions."

H. Rept. No. 1980 which accompanied S. 7, 79th Cong. 1st Sess. at pp. 273-274:

"The requirement that the agency must state the reasons or basis for its findings and conclusions means that such findings and conclusions must be sufficiently related to the record and the law as to advise the parties and any reviewing court of their record and legal basis. Most agencies will do so by opinions which reason and relate the issues of fact, law, and discretion. Statements of reasons, however, may be long or short as the nature of the case and the novelty or complexity of the issues may require.

"Findings and conclusions must include all the relevant issues of law and fact presented by the record. They may be few or many, simple or complex, as the case may be. Where oral testimony is conflicting or subject to doubt of its credibility, the credibility of witnesses would be a necessary finding if the facts are material. It should also be noted that the relevant issues extend to matters of administrative discretion as well as of law and fact. This is important because agencies often appear to

determine only whether they have power to act rather than whether their discretion should be exercised or how it should be exercised. Furthermore, without a disclosure of the basis for the exercise of, or failure to exercise, discretion, the parties are unable to determine what other or additional facts they might offer by way of rehearing or reconsideration of decisions.

Id. at 288. Appendix A, the Committee Amendment proposed the addition of the following sentence to the text of Section 8(b):

“The record shall show the ruling upon each such finding, conclusion or exception presented.”

The footnote in the margin explained this sentence:

“The sentence is added for the purpose of requiring agencies to note their rulings somewhere on the record in order to preclude later controversy as to what the agency had done.”

Proceedings from Congressional Record of March 12, May 24, 25, and 27, 1946, at p. 322 by Senator McCarran:

“Subsection (b) of section 8 concerns submittals and decisions. It provides that prior to each recommended or other decision or review, the parties must be given an opportunity to submit for the full consideration of deciding officers, first, proposed findings and conclusions, or exceptions to recommended decisions or other decisions being appealed

or reviewed; and, second, supporting reasons for such findings, conclusions, or exceptions. All recommended or other decisions become a part of the record and must include findings and conclusions, as well as the basis therefor, upon all the material issues of fact, law, or discretion presented by the record, besides including the appropriate agency action or denial.

Id. at 367 by Congressman Walter:

“The second subsection of section 8 is a statutory statement of the right of the parties to submit for the full consideration of the presiding officers, first proposed findings and conclusions, or second, exceptions to recommended decisions or other decisions being appealed or reviewed administratively and, third, supporting reasons for such findings, conclusions or exceptions. The record must show the official rulings of the agency upon each such finding, conclusion, or exception presented. These provisions assure all parties an opportunity to present their views of the law and the facts and be heard thereon prior to the decision of any case. So that the parties and the reviewing courts may be fully apprised, all recommended or other decisions must include first, findings and conclusions, as well as the reasons or basis therefor, upon all the issues of fact, law, or discretion presented by the record and, second, the appropriate agency action or denial.

“The purpose and effect of these provisions are clear upon the face of the section. One matter should be emphasized. Section 8(b) requires findings and conclusions to be stated upon all the material issues of fact which the parties may present. This means that, within the legal framework of the type of case involved, the number and the subjects of the findings and conclusion will be determined by the record and by the legal factual, or discretion issues raised by the parties. The mere parroting of findings or conclusions in the words of statutes, however sufficient that may be as an ultimate conclusion, definitely would not satisfy in any manner the requirements of this section unless both the statute and the issue were very narrow indeed. Almost any case of consequence involves numerous and detailed issues of law, fact, and discretion. These must all be determined as a part of the decision. Only in that manner are the parties protected and assured that the case has been fully and completely considered and determined.”

APPENDIX B.

The Operation of Station KRLA.

Radio Station KRLA broadcasts a program service of a so-called "Top Forty" character interspersed with news, sports, talk, discussion, religious, and educational programs (T. 251, 764, App. Ex. 23). The music played on KRLA is carefully screened by the announcers, the music director and the program director before being put on the air (T. 1022). Each of the more than 200 records received weekly by the station is qualitatively judged by the program director and the music director with only about 13 out of that number being added to the station play list (T. 1021-1022).

The station maintains a full-time director of news and public affairs in addition to a staff of four newsmen and two stringers (T. 185-188) with emphasis on the local news. Newscasts are given every hour (T. 198).

In addition to this carefully selected music and frequent news, the station regularly broadcasts religious, educational, discussion, etc. programs described in the succeeding paragraphs. Civic leaders and representatives of public service organizations appeared and testified on behalf of the station, and their testimony is reflected below.

A. Agricultural Programming.

Agriculture in the News. The station carries two agricultural newscasts daily. These newscasts include farm news and complete agricultural weather forecasts. In addition, 30 seconds of agricultural news is included in every newscast aired on the station (App. Ex. 23, p. 1).

KRLA Farm Roundup. This program is a 50-minute segment aired each Monday morning from 5:00 to 5:50 a.m. It is a show composed of live and transcribed agricultural information and recorded music. The live portions include weather conditions and frost warnings specifically directed to the farmers of the major citrus crops of the area. Complete weather forecasts for each of the agricultural districts are given. The program also includes a week-end live stock exchange roundup and pertinent local and national farm news (App. Ex. 23, p. 2). The time of this program has been recently changed to 6:00 to 6:50 in order to take advantage of additional program material available at that time and to allow for the participation of an additional newsman in the preparation of the show (T. 1027-1028).

Best Buy of the Day. This program is carried daily Monday through Friday at 10:30 and at 11:45 a.m. It lists the farm products which arrive in Los Angeles in the greatest quantity (App. Ex. 23, p. 3). The information for this program is supplied by Mr. Chevlend of the press department of the Federal State Market Service, whom the station calls each morning to obtain the information (T. 1027).

Frosty's Frost Warning. This is a 2-minute weather show aired three times nightly, Monday through Saturday, during the winter season (App. Ex. 23, p. 4). During the summer season, KRLA carries direct reports from the area ocean beaches as to vacation and water conditions. These reports are received by telephone from selected lifeguard stations and broadcast frequently throughout the day (T. 955).

Agricultural Weather. This is a complete agricultural weather survey presented daily at 6:45 and 7:45 a.m. (App. Ex. 23, p. 5).

B. Discussion Programming

Scope Unlimited. This is a half-hour taped discussion show aired each Sunday from 10:00 to 10:30 a.m. The purpose of the program is to explore through the discussion with experts the problems and issues of interest to the audience (App. Ex. 23, p. 6). The "Scope" of the program is indicated by the individuals who have appeared on this program such as Dr. Igor Annsoft of Lockheed Aircraft, Dr. Howard Seifert, president of the American Rocket Society, Benjamin Hite, Register of voters of Los Angeles County, Gene Burke of the Los Angeles Passport Office, etc. (App. Ex. 23, p. 10). The programs are taped by the station at the convenience of the participants (T. 190).

C. Educational Programming.

Topic Youth. This program is aired Monday through Friday, from 9:00 to 9:30 p.m. Each of the local metropolitan and county high schools is given an opportunity to present its history, background, athletic achievements, student body officers, and other pertinent information (App. Ex. 23, p. 7).

Seminar. This program is heard each Sunday from 10:30 to 10:55 a.m. It is a college lecture series prepared by local universities in blocks from six to ten shows aired on consecutive Sundays. It was first broadcast January 31, 1960. A public witness, Lewis P. Hayes, the student manager of Station KXLU, a station operated by the student body of Loyola Univer-

sity, testified that the faculty of the university has participated in the preparation of the programs broadcast on Seminar and that the tapes which are used on KRLA are also used on KXLU. He also testified that KRLA has supplied the university with tapes without charge and made available its personnel to advise the student staff in the editing of the lectures to fit the radio format (T. 326-327, App. Ex. 23, p. 8).

The broadcasting of the lectures over KRLA has increased the interest of the faculty in participating in discussion by radio. Mr. Hayes testified that during the four years that he has been associated with Station KXLU, no other AM station in the Los Angeles area has even contacted his organization for the purpose of cooperation in the production of programs. Loyola University has approximately 1,200 full-time students and approximately 800 additional students in its law school and night school (T. 328). The initial contact between KRLA and Loyola concerning this program was "... around the month of December or January. . . ." (T. 324).

Marie Martin, Dean of Educational Services at the Los Angeles City College, testified as to LACC participation on the KRLA program, "Seminar." Los Angeles City College has 8,000 day students and 10,000 night students (T. 128). Members of the faculty have broadcast programs on such subjects as electronics, mathematics, and secretarial science. In addition, the earth science department and eight students from the theatre arts group presented "The First TeePee," "Be a Traveler, Not a Tourist." These programs were 25 minutes in length and were taped at the college as a convenience to the faculty (T. 126).

Miss Martin's duties involve the audio-visual aspects of the school's operation. She testified that prior to the approach by KRLA, her school had not broadcast any of its programs on commercial radio stations (T. 123-127). The college is now anticipating the new season and has in fact produced its first tape. The faculty which originally was sceptical as to the value of this program is now enthusiastic about it (T. 127-128). According to Miss Martin, the cooperation which KRLA has given to the college has been 100 per cent "plus" (T. 128).

California. This program is aired nightly from 11:00 to 11:10 p.m. The primary purpose of the program is to serve as a forum calling for the participation by various authorities in scientific and industrial fields. It was first broadcast February 1, 1960 (App. Ex. 23, p. 9). Some of the individuals who have appeared on this program include the Chief of the Guidance of Control Division of Cal Tech, the Deputy Superintendent of the Los Angeles Board of Education, a member of the Board of Governors of the Red Cross, the Chief of Staff of the Strategic Air Command, and a member of the National Aeronautics and Space Administrations, Washington, D. C., etc. (App. Ex. 23, pp. 9-10). The Governor of California has appeared on this program with the station's personnel traveling to Sacramento to tape the Governor's remarks (T. 190). It is the station's policy to record the statements of the participant at times and places convenient for them (T. 190).

The station has, at the time it broadcast matters of controversial public issues, ascertained responsible spokesmen on both sides and made arrangements for

their appearances on the program prior to the broadcast of the first program on the topic (T. 191). For instance, on the question of legislative reapportionment, five spokesmen appeared on this topic alone (T. 192). When scheduling appearances of public individuals or groups, the station makes it a practice first to set up an appointment and then to confirm such appointment by letter (T. 192-193).

D. Religious Programming.

The Rosary Hour. This is a 15-minute sustaining transcribed presentation by the Catholic Church every Sunday from 8:00 to 8:15 a.m. (App. Ex. 23, p. 11, T. 954).

Thought for the Day. This is a 2-minute presentation, Monday through Saturday, from 6:15, to 6:17 a.m. of religious or inspirational message (App. Ex. 23, p. 12).

Religious News Reporter. This is a 5-minute live presentation each Sunday from 8:15 to 8:20 a.m. It is a summary of religious news from around the world presented by Rev. Smith of the Religious News Service (App. Ex. 23, p. 3).

The Sound of His Music. This is a 10-minute religious music presentation each Monday through Saturday at 5:50 a.m. and Sunday, 8:20 a.m. (App. Ex. 23, p. 14).

Spirit of Today. This is a 30-minute program presented each Sunday morning at 8:30 a.m. and repeated at 11:30 p.m. The program was developed by KRLA in cooperation with the major religious groups of the area which participate on a rotating basis at a 3:2:1 ratio divided among the Protestant, Catholic, and Jew-

ish communities. The cooperating organizations are the Federation of Churches of Southern California, the Los Angeles College of Jewish Studies, and the Catholic Archdiocese, all of whom were contacted by KRLA beginning in November, 1959. Representatives of participating organizations appeared in person and testified to these proceedings (App. Ex. 23, p. 15, App. Ex. 22, p. 1, T. 324).

Rabbi Solomon F. Kleinman, the Western Regional Director for the Union of American Hebrew Congregation, testified that the station carries the program free of charge and, in his opinion, represents a high standard of performance (T. 97). He stated that the station cooperated with him "in every way, shape, and form" (T. 99). According to him, the type of program being broadcast by KRLA is of benefit not only to the members of the Jewish faith but to the community as a whole. Unlike the program broadcast on another Los Angeles station (KNX) which is merely a shortened version of the religious service, KRLA attempts to interpret the message of Judaism so that it can be better understood and appreciated by the members of the entire community (T. 98).

In order to make itself meaningful to modern listeners, the program takes the form of a series of readings and comments from Biblical and other religious material interspersed with appropriate religious music (T. 99). According to Rabbi Kleinman, the majority of the radio stations in the community has never contacted his organization for the purpose of carrying programs in its behalf and only one other radio station in the area carries a regular program for the Jewish community of Southern California which encompasses approximately 500,000 people (T. 96).

Rev. Clifton Moore, coordinator of radio and television for the Los Angeles Church Federation testified that when presented by his organization, the format calls for a few minutes of meditation, a hymn, a short talk or discussion on ethical problems, a musical number and then another short talk. Occasionally, two or three young people are brought in and interviewed by the clergymen about the activities of their church youth organization. His group feels that this is particularly appropriate in view of the nature of KRLA's programming which is directed to youth (T. 134). As an example of this type of programming, Rev. Moore cited the recent program "Religion in Politics" which discussions were broadcast as a part of this series (T. 133). This particular type of programming is in accord with feeling of Dr. Moore's committee that a great deal of religious radio is going to be already converted. "Our committee would like to do the type of thing that we are doing on this station where we start with the philosophy of the station's broadcasting and then move to what we want to say within the structure of that particular station" (T. 134).

Regarding the cooperation of the station with this organization, Rev. Moore testified, "It has been very favorable. They have been most cooperative in production in all that we ask them to do" (T. 135). Only two other stations in the Los Angeles area provide free radio for Los Angeles Church Federation. They are KFAC which programs to adults, because of the classical music nature of its programming, and KNX. Insofar as the timing of the program is concerned, Rev. Moore testified that repeats of the presentation met with his philosophy that church broadcasts should not

compete with the time in which services are regularly held in churches. that broadcasts from 9:30 to 12:30 on Sunday are considered competition to the churches. since the ministers hope that at that time people will either be preparing to go to church or on their way to Sunday School or in Church (T. 137).

A Catholic group. Loloya University, was contacted about this program about December, 1959, or January, 1960 (T. 324).

Catholic High Mass. This is a live service broadcast each Sunday from 9 to 9:55 a.m. from Immaculate Conception Church. Los Angeles (App. Ex. 23. p. 16).

Monsignor Right Reverend Julius J. Truxaw, pastor of that church for twenty-five years, testified concerning KRLA's cooperation. His parish is located in downtown Los Angeles and 3,500 people attend the Sunday services at his church (T. 82).

For fifteen years prior to January, 1960, the church broadcast its Mass services over Station KLAC. Los Angeles. The purpose of the broadcast was to bring the church's message to shut-ins, sanitariums, hospitals, and people living at home who are invalids and unable to attend services (T. 83). KLAC carried the programs from 8:00 to 9:00 in the morning, a time very satisfactory for the church (T. 83-84). In January, 1960, KLAC notified the church that the time of the broadcast would be changed from 7:00 to 8:00 a.m., a time unsatisfactory for the church because at that time the sanitariums and hospitals are busy serving breakfast. The church requested a different time, but KLAC refused. In addition, KLAC imposed a charge for the services of a technician who would assist in

the broadcast. As a result of these changes by the station, the church found itself unable to continue the broadcast of KLAC (T. 84).

Following the cancellation of the broadcasts, Fr. Truxaw received thousands of letters regretting the fact that the Mass had been dropped. About two weeks after the cancellation Donald Cooke approached him and offered him the time 9:00 to 10:00 a.m. which he found to be ideal for him because it came at a time after the shut-ins had had their breakfast in the sanitariums and hospitals. The station attached no conditions to the broadcast and told him that all the expenses would be absorbed by the station (T. 85-88).

Since that time, the services have been carried regularly over KRLA. Fr. Truxaw testified that to his knowledge there is not a single other station in California which carries the high Mass regularly. He testified that service performed by KRLA is extremely valuable especially in view of the large coverage afforded by the station. Fr. Truxaw also testified that he received letters from all over California and even from ships at sea telling of the reception of the Mass and that it would be a disservice to the public to discontinue the broadcast (T. 88-89).

Morning Worship Service. This is an hour-long live presentation originating from the Lake Avenue Congregational Church. It is carried from 11 to 12 noon each Sunday (App. Ex. 23, p. 16).

Rev. Raymond C. Ortlund, the minister of that church with a congregation of 1,900 members, testified at the hearing. He was contacted by KRLA in October, 1959, concerning the possibility of the sta-

tion's broadcasting his church's morning service. The first broadcast took place on January 31, 1960; and since that time, the church has been on the air every Sunday from 11 to 12 noon (T. 173-175). In order to make the services more broadcast-worthy, Mr. Ortlund has developed and improved the service to fit the medium of radio (T. 174). As a result of these broadcasts, the church has received numerous letters from all over the area commending them although no mail solicitations were ever made (T. 176). Mr. Ortlund felt that the broadcasts have been a real benefit to religion generally as well as to the church as evidenced by the fact that on the Sunday preceding the hearing, there were 1,210 persons attending the church, which is far beyond its seating capacity (T. 176).

Mr. Ortlund testified that as far as he knew there was no other Protestant service carried from 11 to 12 on Sunday on any radio station in the community, except for the Pasadena Presbyterian Church which operates its own FM radio station (T. 177).

In addition to these regularly scheduled features, KRLA cooperates with the local civic groups through specialized spot announcement campaigns on a saturation basis. It has carried spot announcements for such diverse groups as the League of Women Voters and the National Guard (App. Ex. 25, pp. 11, 14). The extent of KRLA's cooperation with local public service organizations can be gaged from the testimony of representatives of these groups who appeared at the hearing.

Joseph J. Micciche, the director of Civil Defense for the City of Los Angeles, testified regarding the cooperation given his organization by KRLA. He tes-

tified that part of his activities includes the public distribution of information concerning the functions of Civil Defense and that he utilizes the mass media of communications for this purpose (T. 104). He was approached by KRLA with an idea of conducting a series of programs regarding fall-out shelters in which the various aspects of Civil Defense work would be discussed (T. 104). The station further suggested that listeners could write in requesting a package of Civil Defense literature. Up to that time, his organization had been issuing single copies of Civil Defense literature; and it was the station's suggestion that these pamphlets were distributed in a package (T. 105).

As a result of five broadcasts by KRLA, the office of Civil Defense received over 500 requests for literature packages (T. 106). The main value of the programs offered to Civil Defense was in the fact that KRLA was willing to carry them in a series rather than one-at-a-time interviews or single programs (T. 111). Mr. Micciche testified that to the best of his knowledge no other station in the area carried programs on the subject other than KRLA (T. 107). In addition, KRLA has prepared and broadcast on a saturation schedule Civil Defense spot announcements (T. 110).

William Lindsay, a public relations executive for local civic organizations such as the National Safety Council, Multiple Sclerosis Society, Musclar Dystrophy, Mental Health, Good Will, Big Brothers of Los Angeles, etc., testified that his duties include the arranging for the placing of campaigns or spot announcements on various local radio and television stations. His association with the KRLA station began in June, 1959.

He testified that his relations with the station have been most cordial and that KRLA was an unique station which requested on its own accord the placement of public service announcements over its facilities (T. 117).

As an example of KRLA's effectiveness in this field, Lindsay testified that collections for Good Will Industries in the Pasadena area have increased 300 per cent after KRLA's announcement campaign (T. 119), and other charities represented by Mr. Lindsay have advised of immediate and direct responses from announcements which were made over KRLA (T. 122).

Lawrence J. Sullivan, the field secretary of Boys Republic at Chino, California, testified in behalf of KRLA. His organization is a non-sectarian youth facility for the rehabilitation of high school youngsters. It is a privately supported agency consisting of a 215 acre farm, housing, schools, etc., for about 130 boys. A large part of the funds of the organization is raised through the sale of Christmas wreaths and a semi-annual sale known as the White Elephant Exchange which, according to Mr. Sullivan, is the world's largest rummage sale. This sale is held in March and in October of each year (T. 60-63).

During these sale periods and at Christmas time, the station has given the Boys Republic a saturation coverage (T. 62). Mr. Sullivan testified that during the preceding Christmas season that the Boys Republic sold 3,000 more Christmas decorations than ever before, resulting in a minimum additional income of \$21,000 (T. 63). He testified that the saturation coverage given by KRLA to his organization "has been a very important factor in our growth" (T. 63). He

stated that insofar as the media of mass communications are concerned, the cooperation given to his organization by KRLA has been "Number One" (T. 66) and that, while he has the cooperation of other radio stations in the area, "KRLA has been exceptional in their cooperation with us" (T. 67). In his opinion, the spot saturation campaign of KRLA is more important to his organization than a sketchy type of coverage (T. 71).

Miss Lillian H. Doty, an official of the March of Dimes National Foundation, testified concerning the cooperation given by KRLA to her organization. Her duties include the responsibility for public relations and publicity, including radio, television and newspapers (T. 73). Beginning in the middle of September, 1959, KRLA has planned publicity campaigns on behalf of the National Foundation. As a result of a number of telephone conversations between the station and the Foundation, a program was devised to be aired during Community Health Week, March 21 through 26, 1960. The station's cooperation included the sponsorship of a free clinic for the people of the downtown area for the purpose of receiving polio vaccines, with the station bearing the cost (T. 74). In addition, the station has broadcast the schedules of other clinics established and conducted by the Foundation (T. 74).

Approximately 500 posters were distributed by the station free of charge in connection with this clinic. Although KRLA contributed to the cost of the clinic, this sponsorship was not publicized to any extent (T. 75-76). As a part of the station's cooperation, tapes were made at the National Foundation's office consisting of conversations with Miss Doty concerning the

activities of the organization. As a result of this activity, some 3,600 people of the downtown area were inoculated. This clinic was particularly helpful to people who were working downtown and could not go elsewhere for the clinics (T. 76).

In addition to the clinic on Pershing Square, the station also publicized and sponsored a clinic in the Spring Arcade in downtown Los Angeles (T. 78). KRLA is the only station that has contributed to the burden of maintaining the clinics (T. 79).

This type of publicity cooperation given by KRLA is best exemplified by Miss Doty's statement: "It [KRLA] was on the air, well just any time practically that you would turn it on there was some mention of this program that we were having at Pershing Square and also the one we had in Spring Arcade" (T. 79).

In addition to this publicity, the station also carried spot announcements for the Foundation in connection with its regular activities (T. 80). The station has never refused any request made of it by the Foundation (T. 77).

Miss Patricia Hull, the Public Relations Director for the Los Angeles YWCA, testified in behalf of KRLA. The YWCA serves between 125,000 and 200,000 people in the Los Angeles area (T. 145). Miss Hull has found the cooperation of KRLA to be different from the cooperation which the YWCA receives from the other stations in the area because of the saturation type of production which KRLA offers to the association (T. 146).

The first contact which the YWCA had with KRLA concerned the Y-Teen Roll Call which is a nationwide

YWCA activity. The contact was made by Miss Shane Wilson of KRLA's public service department. Miss Hull testified that the YWCA does not have to request help from KRLA. The station offers its services to the Association (T. 142). A part of the cooperation which KRLA offers to YWCA is the sponsorship of newscasts in which the YWCA is given the same exposure and treatment as if it were a commercial sponsor. During the month of July, 1960, alone, the value of such sponsorship to YWCA was approximately \$5,400. No charge is made to the YWCA for such "sponsorship" (T. 143). At one time, when the YWCA Y-Teen Camp was short of participants for one week, the YWCA called KRLA and asked the station "to come to our rescue." The station not only carried these spot announcements, but, in fact, prepared them; and within a short while, there were 100 requests for participation in that camp (T. 143).

KRLA, according to Miss Hull, was helpful in the successful outcome of other YWCA activities; and the station was "... rendering an immeasurable community service" (App. Ex. 6).

Don Foltz, the administrative assistant to State Senator Richards, of Los Angeles County, testified in behalf of KRLA. Senator Richards is the sole legislator in the State Senate of that County which encompasses 6,500,000 people (T. 150). Part of Mr. Foltz's duties includes the dissemination of information through the various media of public communications (T. 151). He has found KRLA to be most cooperative in broadcasting news deemed to be of public interest by the Senator's office, and he has heard at least four or five of the broadcasts himself (T.

152-153). The station has also been active in the "get-out-the-vote campaign" and the movement to reapportion the legislative districts (T. 153). The Senator has a regular program on another station and except for that, Mr. Foltz has found that KRLA has been in closer contact with the Senator than any other stations in the Los Angeles area. It was his opinion that the cooperation he has received has been of benefit to the public in keeping it advised of the matters of legislative concern (T. 154). The station has made taped broadcasts from the Senator's office as well as a broadcast from Sacramento which is 524 miles from Los Angeles (T. 157).

Ted James, director of Public Information for the Greater Los Angeles Chapter of National Safety Council and executive secretary of the Motion Picture, Radio and Television Committee, testified in behalf of KRLA (T. 159). His duties involve contact with 85 radio and 11 television stations in southern California (T. 159). KRLA was put on Mr. James's activity list in June, 1959, and Mr. James testified that he heard spot announcements on a station commencing at that time (T. 160, 164). When the Safety Council was promoting its back-to-school safety campaign, KRLA made practically all of its newscasts available for "sponsorship" by the Safety Council. In addition, the station has produced spot announcements from scripts prepared by the Safety Council (T. 161-165). In addition, at the request of the station, the traffic reports for the preceding 24 hours are made available to KRLA each morning and are carried between 11:00 and 11:30 each day (T. 162). Testifying as to the type of relationship which the Safety Council has had with

KRLA, Mr. James said, "I have had so much work with KRLA in the past I feel almost like a staff member" (T. 163).

Harold Muntz, the Chief Deputy Probation Officer for Los Angeles County which operates fifteen institutions, testified in behalf of KRLA. In accordance with the policy of the county government, the department is not permitted to have its own public relations program but nonetheless it is eager to have the public recognize the value of its activities. KRLA approached the probation department in March, 1960, requesting that a representative of the department make a statement in connection with a program on juvenile delinquency. As a result of this approach, the station developed and broadcast eleven interviews with the department on the subject of juvenile delinquency (T. 168-169). The programs were taped at the department for its convenience (T. 170). Mr. Muntz stated that while other stations may occasionally carry programs for his department, KRLA is the only one in the Metropolitan area which has carried a series of programs (T. 170). The station has on occasions rerun the tapes during evening hours. According to Mr. Muntz, this has increased the effectiveness of these programs; and the department has received much favorable response. No charge was made for this service (T. 170-171).

BRIEF FOR APPELLANT IN NO. 17,240

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 17,239

**Immaculate Conception Church of Los Angeles and
Lake Congregational Church of Pasadena,**

Appellants,

v.

Federal Communications Commission

Appellee

NO. 17,240

Eleven Ten Broadcasting Corporation,

Appellant

v.

Federal Communications Commission,

Appellee

United States Court of Appeals

for the District of Columbia Circuit

Appeal from Decision and Orders of the
Federal Communications Commission

FILED FEB 20 1963

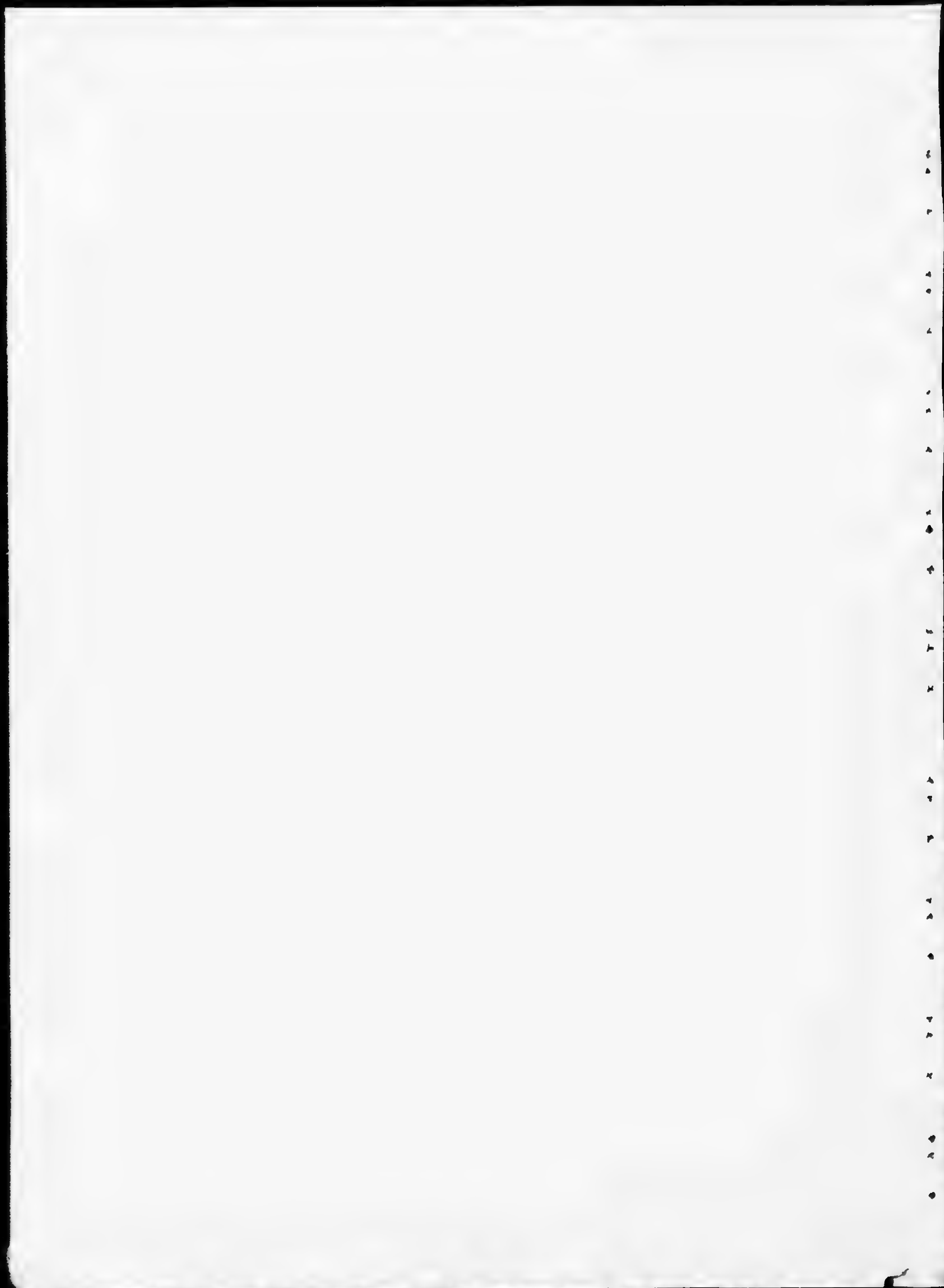
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February 4, 1963

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STATEMENT OF QUESTIONS PRESENTED

The parties have stipulated that the following questions are presented:

1. Whether the Commission decided issues adversely to Appellant without affording the latter proper and adequate notice and opportunity to be heard on those issues and, if so, whether Appellant was denied a fair hearing in accordance with constitutional and statutory requirements.
2. Whether the Commission's Decision denying a renewal of Appellant's license to operate station KRLA is arbitrary and erroneous in that (a) its findings are unsupported by substantial evidence in the record considered as a whole, and (b) its conclusions do not flow logically from the findings.
3. Whether the Commission's conclusion that Appellant's president was guilty of efforts to deceive the Commission is unsupported by the record and is arbitrary and capricious, and, if so, whether in making that conclusion a principal basis for its decision to deny renewal of Appellant's license to operate KRLA, the Commission committed reversible error.
4. Whether, in denying renewal of Appellant's license to operate station KRLA, the Commission failed to consider or make findings and conclusions with respect to substantial evidence (either in the record or improperly rejected when proffered) which is relevant and material to the discharge of the Commission's responsibility to determine whether the public interest, convenience or necessity would be served by continued operation of KRLA — including, particularly, evidence designed to show that KRLA presented meritorious programming and that it rendered a needed and desired service to its community; and, if so, whether the Commission thereby failed to comply with the requirements of the Communications Act

of 1934, as amended, and Sections 7 and 8 of the Administrative Procedure Act.

5. Whether the Commission's findings can be ascertained only by reference to the Initial Decision, the Exceptions, the Final Decision, and Rulings on the Exceptions, and, if so, whether the findings are in such form and so unclear and imprecise as (a) not to constitute findings made by the Commission, and (b) to preclude proper judicial review of the Decision.
 6. Whether the Commission's action in denying renewal of Appellant's license in the particular circumstances presented in this case was drastic and represented a significant decisional departure from policies and decisions of the Commission in similar cases, and, if so, whether the extent thereof could and did render it arbitrary and capricious; discriminatory against Appellant; a denial of due process to Appellant; and tantamount to a revocation of license without affording Appellant the procedural safeguards provided in the Communications Act of 1934, as amended, and the Administrative Procedure Act.
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NOS. 17,239 and 17,240

Immaculate Conception Church of Los Angeles, and
Lake Congregational Church of Pasadena,
Appellants,

v.

Federal Communications Commission,
Appellee.

Eleven Ten Broadcasting Corporation,
Appellant,

v.

Federal Communications Commission,
Appellee

Appeal From Decision and Orders of the
Federal Communications Commission

BRIEF FOR APPELLANT ELEVEN TEN BROADCASTING CORPORATION JURISDICTIONAL STATEMENT

Eleven Ten Broadcasting Corporation, the appellant in No. 17,240, has taken this appeal from (1) a decision of the Federal Communications Commission (hereinafter "Commission") adopted March 15, 1962 (reported in 32 F.C.C. 706) which denied appellant's applications for a renewal of license and for a license to cover a construction permit (CP) to increase power to 50 kilowatts; and (2) an order of the Commission (adopted July 18, 1962) denying appellant's petition for reconsideration (reported in 33 F.C.C. 92).¹

This Court has jurisdiction of this appeal under Section 402(b)

¹ The report in 33 F.C.C. 92 differs in some respects from the Memorandum Opinion and Order as certified to this Court (R. 1545). See Argument, *infra*, n. 54, p. 52.

of the Communications Act of 1934, as amended (48 Stat. 1093, as amended, 66 Stat. 718, 47 U.S.C. Sec. 402(b)), and Section 10 of the Administrative Procedure Act (60 Stat. 243, 5 U.S.C. Sec. 1009).

The notice of appeal was filed in this Court on August 22, 1962. On November 21, 1962, the Court *sua sponte* ordered this case consolidated with No. 17,239, which involves appeals from the same decision and orders of the Commission.

STATEMENT OF THE CASE

I. PRELIMINARY STATEMENT

Appellant, the licensee of radio station KRLA,² Pasadena, California, applied to the Commission for renewal of its operating license and for a license to cover CP to increase power from 10 to 50 kilowatts (R. 2).³ A hearing on the applications was held and in an Initial Decision released April 21, 1961, the Chief Hearing Examiner, who presided at the hearing, and a Hearing Examiner who was associated with him in the preparation of the decision, granted both applications but limited the renewal to a one-year, instead of the regular three-year, period (R. 968). On March 15, 1962, the Commission reversed the Examiners and denied both applications (R. 1244).

A petition for reconsideration and/or reopening of the proceedings, which urged *inter alia* that the Commission had decided the case on issues on which appellant had not been afforded an opportunity to be heard, was denied. (R. 1545.) The effective date of the decision was stayed to permit appellant to operate KRLA during the pendency of the instant appeal (R. 1850).

² The call letters at the time were KXLA; they were changed to KRLA on August 31, 1959. Hereinafter, the station will be referred to as KRLA.

³ In accordance with the pre-hearing stipulation approved by the Court, the page numbers of the record as certified to this Court ("R.") are shown in bold type in the Joint Appendix. The original pagination of the transcript of the FCC hearing ("Tr.") was maintained in the record certified to the Court and is also carried over to the Joint Appendix.

2. THE HEARING

The order designating the applications for hearing listed the following issues:

1. To determine whether, in light of its operations since it acquired station KRLA, the licensee's program proposals contained in its application for Commission consent to assignment of the license of station KRLA (then KXLA) (BAPL-171) were made in good faith;
2. To determine whether, in light of the manner in which the Find Perry Allen contest was conducted by station KRLA in and about September, 1959, the licensee operated said station for improper purposes contrary to the public interest;
3. To determine whether the station's program logs for the week of October 18-24, 1959, were altered with the intent and purpose of deceiving the Commission;
4. To determine whether, since the date of assignment of license of station KRLA (formerly KXLA) to the licensee, Jack K. Cooke, a Canadian citizen, has exercised control with respect to the operations of said station contrary to the provisions of section 310 of the Communications Act of 1934, as amended, and the Commission's rules and policies promulgated thereunder;
5. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether a grant of the above-entitled applications would serve the public interest, convenience, or necessity. (R. 353.)

The evidence adduced at the hearing, to the extent pertinent to points raised in this appeal, may be summarized as follows:

A. Assignment of Station to Appellant

On March 25, 1959, the Commission consented to the assignment of CP and license to operate station KRLA from the Pacific Coast Broadcasting Company to appellant, a corporation of which

⁴ This statement of evidence is based almost entirely on those findings of the Examiners to which neither party took exception. That source is supplemented or corrected by references to evidence contained in exceptions granted by the Commission. The Initial Decision will be referred to as "I.D." with the applicable numbered paragraph, and by the record citation. Exceptions of appellant and the Broadcast Bureau to Examiners' findings will be referred to, respectively, as "Exc." and "B.B. Exc." with the appropriate number and record citation.

Donald Cooke (Don) was the sole stockholder and president.⁵

In obtaining Commission approval of the assignment, Don, who operated a radio representation firm in New York City and lived in Hartsdale, New York, stated that he would continue to maintain his principal office in New York, but would make frequent visits to California and would spend part of his time in the Los Angeles area in the active operation of station KRLA. He further stated that he would employ a competent full-time station manager and, if it turned out that his presence for more than a quarter of his time was necessary or desirable, it would be so arranged. (R. 925.)

The purchase was consummated on May 1, 1959. Loyal King, the principal stockholder and general manager of the former owner, was asked by Don to stay on as general manager for appellant until a suitable replacement could be obtained. Don returned to New York City on May 5, 1959 and commenced negotiations to hire new supervisory employees for KRLA. (R. 927, 928.)

B. Selection of Supervisory Employees

William J. Wheatley, who was employed as program director by Station WKY, Oklahoma City, was selected for similar duties at KRLA. Don, who was familiar with WKY's operation, had been informed that Wheatley had excellent experience in the field of modern radio operation, and he regarded him as especially suitable to accomplish Don's objectives in programming KRLA. (R. 928.) Wheatley came to New York for an interview with Don on May 15, 1959, at which time Don's plans for programming the station as a "Top Forty" music operation, including talks and cultural programming, were disclosed to Wheatley. (R. 927, 989.)⁶

⁵ The total consideration paid for the station was \$900,000, plus the costs, not to exceed \$115,000, involved in the construction of the 50 kilowatt facilities. (R. 923; Exc. 2, R. 980.) The physical facilities of the station were acquired by a corporation owned by Don's brother, Jack Kent Cooke, and leased back to appellant. (R. 923.)

⁶ "Top Forty" is an industry term which refers to a practice of highlighting, in the various musical programs, the forty most currently popular musical selections.

Since it appeared that Wheatley's experience at Station WKY had been along the same lines as the operation Don proposed for KRLA, he was hired and asked to report to Pasadena as soon as possible. He moved to the Los Angeles area and reported for work on July 1, 1959. Loyal King, who had continued as general manager to accommodate Don, left the station two days later and Wheatley assumed general supervision of the station for a two-week period pending the arrival of the new general manager, Edwin Schulz, on July 15, 1959. (R. 928, 989.)

A canvass of broadcasters to choose a general manager of the station was conducted by Don. He decided that Schulz, then general manager of Station KJAY in Topeka, Kansas, was the most likely prospect and, after a personal interview, hired him on May 16, 1959. Arrangements were made for Schulz to take over as general manager of KRLA as soon as possible. In the interim, before Schulz reported for duty, he and Don were in frequent communication with each other to discuss the latter's plans for operating the station. Don supplied him with a copy of the program schedule and policies submitted to the Commission with the assignment application. He instructed Schulz that the schedule to be broadcast should be similar or closely related to that submitted to the Commission, although he did not contemplate that it could be identical. Similar instructions were given to Wheatley before he assumed the duties of program director. (R. 928, 990.)

The assignment to appellant on May 1, 1959 included a CP to increase the station's power to 50 kilowatts, daytime. Until such time as construction and installation could be completed and proof of performance tests submitted to the Commission, and until the station received authorization to begin program tests, it was restricted to a power of 10 kilowatts. It was anticipated that operation with the substantially increased power (which would greatly enlarge the station's coverage area) would be put into effect by August 1 (the date was later extended to September 1), and that a new programming format would be instituted concurrently. (R. 928.)

The initial efforts of the new management were devoted primarily to the selection of a competent staff, the completion of the new physical facilities, and the arrangements for the new program format. The task of creating a new format and assembling a staff was compounded by the inherent problems of simultaneously keeping the existing program service on the air. Wheatley auditioned 100 to 150 new announcers; supervised, evaluated, and eventually terminated the services of the entire staff of announcers taken over from the former owners; created a new music library; and organized the continuity and production department. Within a week after his arrival, Wheatley cancelled commercial religious programs, as well as programs emanating from night clubs, in accordance with the representation by Don in the assignment application. (Exc. 30, 31; R. 992, 993.)⁷

During this transitional period, Don was in frequent contact, by letter and telephone, with Schulz and with the station's accountant in an effort to work out satisfactory budgets and a system of financial reporting for the station. Don sent sample budgets, but the accountant experienced difficulty in preparing budgets and other financial reports to Don's satisfaction. At Don's request, his brother, Jack Kent Cooke (Jack), an experienced broadcaster and owner of a radio station in Toronto, Canada, who also owned KRLA's physical facilities (footnote 5, *supra*) worked for about a week in July with Schulz, Wheatley and the accountant on preparing a budget for the station, helping to organize the sales department, and setting up sales reports for Don in accordance with the latter's wishes. (R. 929, 993, 994.)

Don communicated frequently by telephone and mail with Schulz and other members of the staff, giving them instructions and receiving detailed reports of the station's activities in which were discussed the accounting, engineering, programming personnel and sales problems, and other developments. (Exc. 40, R. 997.)

⁷ As explained in n.4, *supra*, references to Exceptions are solely to those granted by the Commission.

Between August 12 and 21, 1959, Don was at the station's sales office or studio, engaged for the most part in further organizing the sales department. When his brother Jack arrived in Los Angeles on August 19, Don informed him that ". . . [KRLA] was a mess." On August 20, a "dry run" of the new format of the station was held. Each "disc jockey" whom Wheatley had hired did a simulated 30-minute program for Don, Jack, Schulz and Wheatley. Don asked Jack, whose knowledge and experience with "Top Forty" programming was more extensive than his own, to give him the benefit of his appraisals of the announcers, the pace of the operation, etc. Jack informed Don that he was "shocked" by the inadequacies of most of the disc jockeys hired by Wheatley. That evening, Don conferred with Schulz, Wheatley and Jack and decided to discharge those announcers whom he considered unsatisfactory. The group then analyzed audition tapes of various applicants. It was agreed that Jack would direct a search for new talent and that Don, Wheatley and Schulz would contact likely prospects. Don returned to New York City on August 21 after asking Jack to take over the duties of program director. (R. 931.)⁸

C. The Golden Key Contest

The target date for the switchover to the 50 kilowatt operation and the concomitant commencement of the new programming format was September 1. A large party was planned for that day to be attended by leading advertisers in the area in order to observe and publicize the formal inauguration of KRLA's increased coverage and new programming format. (R. 939.)

On August 28, the Commission notified appellant that program test authorization under the new CP would not be granted until additional engineering data were submitted.⁹ The consequent inability to meet the announced target date of September 1 and the

⁸ See also, Exc. 48, 49, 51; R. 1000 and B.B. Exc. 1, R. 1059.

⁹ On August 31, the station received program test authorization and, at 6:00 A.M. on September 3, the regular programming of the new "Top Forty" format commenced. (R. 933.)

uncertainty as to the exact time of opening gave rise to the concept of conducting a promotional contest as a "sustaining action" pending the receipt of the program test authorization. The idea revolved around a "Golden Key" which would symbolically unlock the new transmitter for the 50-kilowatt operation. Appellant announced that the key was hidden and that a money prize would be given to any listener who located it. "Clues" to the key's location were broadcast; the prize initially was \$50,000 but became less as the clues became more informative. (R. 933.) The contest began at midnight on September 1. During the 30-hour interval until the regular program format was begun at 6:00 A.M. on September 3, the station confined its broadcasts to announcements of the Golden Key contest and two other "telephone contests" in which prizes were offered. (R. 934.)

The clues (during the time the prize for finding the Golden Key was between \$50,000 and \$40,000) were conceived by Wheatley and consisted essentially of doggerel or limericks which were so ambiguous as to have applied to any location.¹⁰ Before being broadcast, they were submitted to Jack (who had hidden the key) and, as he testified, they were so uninformative that it was "the closest thing to being impossible" that the location of the object could have been ascertained from listening to them. (R. 934) When the prize descended to the \$20,000 level, however, the clues were made sufficiently definite to be usable in discovering the key. On September 7 — which was Labor Day — they were made increasingly more revealing each half-hour, with the expectation that someone would find the key during that afternoon so that the

¹⁰ Typical examples were the following:

"All of a sudden out of a night / Comes an idea but not in sight / An open transom, a man quite handsome / Says Say, have you got a light."

"On the slope of the hill they play / The children, day after day / If they knew the wind blew / They would turn first to you / Then you would not be far far away."

"All over Los Angeles the keys are found / To fairly abound, But a look toward Norway / Could just be your way / To fortune and fame all around." (R. 662.)

attendant publicity on a holiday would be at a maximum. The key was actually located that afternoon and the winner of the contest was paid \$5,000. (R. 934-935, 1003-1004.)

D. Perry Allen Contest

When it was decided to replace most of the announcing staff for the 'kickoff' of KRLA's new program format, an effort was made to hire Perry Allen, a disc jockey employed at a station in Buffalo, New York. Jack, who agreed, at Don's request, to supervise the programming during the emergency period, succeeded in contacting Allen in Buffalo during the last week of August, and, on Don's behalf, offered him a job at KRLA. Allen was told that he would be needed for the September 1 target date and he agreed to try to be on hand for the opening. He found, however, that he could not report to KRLA until September 12 because of contractual commitments to the Buffalo station. (R. 935, 936.)

When Jack learned of this delay, he conceived the idea of a promotional contest centering around Allen and publicizing his connection with KRLA. In this contest, called "Find Perry Allen," listeners were invited to walk up to a person and ask "Are you Perry Allen, the latest member of Eleven Ten?" It was announced that the first person to locate Allen would get a prize, which would be \$10,000 (if Allen were located the first day) with a reduction of \$1,000 each day thereafter until Allen was "found." Allen was instructed by Jack to record on tape a number of announcements containing some reference to his appearance and inviting listeners to go out into the streets, restaurants, ball parks, etc., and look for a person answering his description. The tapes were broadcast by KRLA, together with accompanying ad lib comments or "tags" by the various disc jockeys who were on duty. One or more of these tags implied that Perry Allen could be located in the Los Angeles Area. (R. 936, 937, 1009.)

This contest, which began on September 3, ended abruptly the next day when Allen was "found" in Buffalo by two employees of a

rival Los Angeles station who knew of his whereabouts and claimed the prize. The winners of the contest were paid \$10,000. (R. 938).

Although Don had authorized his staff to conduct promotional contests, and had made provision in KRLA's budget for prizes for the Perry Allen and Golden Key contests, he was not cognizant of the clues which were broadcast on either contest, having delegated responsibility for the details to Jack, Wheatley, and other members of his staff. (R. 1010, and Tr. 459, 724, 804-805, 870-871.) During the time that the contests were conceived and run, he was away from the Los Angeles area. (Tr. 780; Exc. 82, R. 1010.)

E. Programming Promises vs. Performance

Under the previous owners, KRLA's programming consisted primarily of country and western music and its income was derived largely from commercial religious broadcasts and remote broadcasts from night clubs (R. 928, 991). In the application seeking Commission consent to the assignment of license to appellant, Don represented in an exhibit prepared November 20, 1958 that KRLA would not accept sponsored religious programs; that recorded and transcribed popular music would constitute the majority of the music broadcast; and that the programming format would emphasize music, news and sports, and also include certain discussion, religious, educational, agricultural and community service programs. (R. 940-941.)

With respect to agricultural programming, the application stated that:

. . . the station will schedule one hour program each week calculated to satisfy the needs and the entertainment mores of the farm audience. Bulletins highlighting farm market prices, weather conditions of interest to the farmers — such as storm and frost warnings — will be broadcast on every newscast twenty-four times a day. (R. 941)

Appellant also represented, in the assignment application, that it would "schedule at 10:45 P.M. nightly, the program, 'Town Hall', on which exponents of culture, science, technology, etc., will speak," and that it planned to "schedule each night at 10:40 P.M.,

Monday thru Saturday, the program 'Town Crier' in which will be broadcast announcements and information highlighting the events of the community; charity, hospital, church and civic organizations. . . ." (R. 941-942.)

On October 2, 1959, Don sent an inter-office memorandum to Schulz and Herb Heiman, who had replaced Wheatley as program director, in which he stated that although he had included a farm report on each newscast in the schedule which had been submitted with the assignment application in 1958, he ^{now} ~~how~~ regretted that he had done so and thought that a 30-second farm market report on certain specific newscasts would be sufficient. He stated further that he did not want the usual "hay seed" type of report inserted on the newscasts, and suggested, instead, the broadcasting of market prices of fruits, grains and cattle. (R. 944-5.)

The memorandum also referred to the promises to broadcast public service talks in the late evening and a series of religious programs. As to the former, he asked Schulz and Heiman whether the use of a public service announcement for a quarter-hour nightly would "satisfy the FCC" and whether "both of you fellows [are] satisfied that we should not have to put a 15-minute talk in." As for the religious programs, Don stated that nothing would please him more than to remove the necessity of a round table of church programs in the 11:00 A.M. to 12 noon period Sundays. He asked if it would "pass muster" if they put the program on between 6 and 7 A.M. on Sundays. Don asked Schulz and Heiman for their reactions to his suggestions and questions and, with respect to farm reports on newscasts, he asked Heiman particularly to give the matter his serious attention since "I am not anxious to run afoul of the FCC." (R. 944-5.)¹¹

In explanation of the statement contained in the memorandum regarding religious programs, Don testified that KRLA had lost

¹¹ In view of the importance attached to this memorandum by the Commission, it is set forth in its entirety, for the Court's convenience, in Appendix B, infra.

a great deal of money and he had asked Schulz' reaction to putting on the religious programs earlier in the day, since he felt that "perhaps the 11-12 noon Sundays could be sold commercially for at least the time being to get us out of this terrible loss position." (I.D. 68, R. 946)

On October 4, 1959, Heiman informed Don that "We are incorporating 30 seconds of a morning newscast to a 'Farm Fair' . . . of interest mainly to the consumer rather than the farmer." (I.D. 70, R. 947) Schulz reported to Don on October 5, 1959 that:

" . . . In regard to your memo of this week to Herb Heiman re the agricultural segments, I have had Herb organize the news department to handle a 40-second market round up in the 5:55 A.M. and 11:55 A.M. newscasts. In addition to this we will start next week in running two two-minute featurettes a day covering the 'Best Buys' in produce. These two daily featurettes will be directed to the housewives . . . and will be done in cooperation with the USDA produce reporter at the Los Angeles fruit and produce market center. These four elements in our daily programming will meet our obligations to the FCC under the outlined program schedule which I sent to Tommy Dowd (KRLA's counsel) as an amended exhibit to our renewal application. You can be assured that we will not run afoul of the FCC in this regard.

"Public Service: I have also set up a new approach to Public Service announcements. We will choose two or three public service projects every two weeks, and do a regular saturation spot campaign for the activity tying in to the local organization. These local people will be informed by letter of the exact schedule, so that they are aware of what KRLA is doing for them. In this way we will be able to concentrate on specific public service causes, and do a resultful job for them, instead of scattering a few public service spots for many different causes like most stations do. Also in regard to your question about the quarter hour public service segments, we have redesigned our log so that it shows every 15 minute segment in the 24 hour broadcast period. Don, one single minute spot for public service run in a sustaining quarter hour, can and will be claimed as a fifteen minute period of public service. WE DO NOT have to fill the entire 15 minutes with gab, we simply run our regular KRLA format, and include a one minute participation for a public service subject within the 15 minute period." (App. Exh. 18, p. 44; R 515; Excs. 98, 99, R. 1016.)

Don returned to Los Angeles on November 9 and remained

until November 20. The station was then broadcasting announcements or programs for various charitable, civic and cultural activities, such as the March of Dimes, Big Brothers, Goodwill Industries, Civil Air Patrol, Fire Prevention Week, Fight Against Muscular Dystrophy, etc. (Exc. 104, R. 1018). While Don was in Los Angeles, the station carried a 40-second market round-up in the 5:55 and 11:55 A.M. newscasts and two 2-minute "Featurettes" of market advice directed to housewives. (I.D. 73, R. 948.) In addition, it was broadcasting, 6 to 10 times daily, a program entitled "Entertainment Compass," featuring a calendar of specific events (art shows, theater openings, athletic contests, etc.). (Exc. 105, R. 1019.)

The station was continuing to lose money and Don attempted to improve advertising revenue (R. 948). He also called Heiman's attention to the need for developing more public service programs. In response thereto, Heiman entered into negotiations with representatives of various religious organizations, looking toward the production of programs in their behalf. These negotiations culminated in the program "Spirit of Today," which commenced on December 5, 1959 and embodied religious messages of various denominations. (Tr. 927-933, 936; Exc. 104; R. 1018.) In October, 1959, appellant offered the Lake Avenue Congregational Church KRLA's facilities to broadcast church services, the offer was accepted, and the broadcasts began in January, 1960 (Tr. 173).

F. Section 309(b) Letter

On August 14, 1959, Don executed an application for renewal of license on behalf of appellant. It was filed with the Commission on September 2, 1959, amended on September 30, 1959, and further amended on November 12, 1959. (R. 2, 55, 73.)¹²

¹² The licenses of all radio stations in a designated geographical area are issued to expire on the same date. In the case of California stations, the expiration date was December 1, 1959, 47 C.F.R. Sec. 3.34. Hence, KRLA had to file a renewal application by early September, 1959, even though it had been under appellant's ownership for only four months.

On December 16, 1959, the Commission sent appellant a Section 309(b) letter¹³, in which it stated that it appeared that the application would have to be designated for hearing because (1) the programming of the station did not match the proposals in the 1958 assignment application and, hence, a question existed as to whether or not appellant had intended to carry out the earlier representations; (2) the logs for the week of October 18-24, 1959 may have been falsified by the addition of certain religious programming that was not actually broadcast on those dates; (3) a question is raised as to whether appellant's conduct of the Perry Allen contest may have constituted an improper use of its facilities; and (4) Jack Kent Cooke's activities at the station may constitute actual control, contrary to Section 310 of the Communications Act and the representations to the Commission made at the time of the assignment application (R. 189).¹⁴

G. Response to Section 309(b) Letter

On January 4, 1960, Don wrote to Heiman and, after referring to a report by Heiman on the public service and religious programming scheduled by KRLA, stated:

"So far as it goes, well and good. However, I want very much to put our public service house in order, exacting order, well before January 15. I say this because I hope to include in my response to the FCC letter of December 16, a fulfillment of the promises of my FCC submission of November 20, 1958." (R. 585.)

Don reviewed the performance of KRLA as compared with the

¹³ The term "Section 309(b) letter" refers to the notice required under the then applicable section 309(b) of the Communications Act of 1934, as amended, which required the Commission if it was unable from an examination of the application itself, to conclude that a grant would serve the public interest, convenience and necessity, to notify the applicant of the reasons for its inability to do so and to give it an opportunity to reply, before the application was formally designated for hearing. Appendix A, *infra*.

¹⁴ The Section 309(b) letter also raised questions as to the number of spot announcements and as to the engineering portion of the application. These matters were answered in appellant's response to the 309(b) letter to the apparent satisfaction of the Commission.

programming statements in the assignment application. In those instances in which he found that KRLA had fallen short of complete fulfillment of its expectations, he directed Heiman to initiate immediately additional public service programs to satisfy any deficiencies. These included, among other things, broadcasting a church service between 11 and 11:55 A.M. Sundays;¹⁵ scheduling a one-hour weekly program for farm audiences; incorporating 30 seconds of farm information on every newscast 24 hours a day; scheduling a nightly program at 10:45 ("Town Hall") in which various scientists, scholars, etc. would appear; and providing three 1/2-hour periods of educational programming on Sunday morning. As to the last-mentioned, Heiman was told to devote efforts to them but only after he had fully carried out the instructions to program "Town Hall." (I.D. 75, R. 950; Exc. 107, R. 1020.)

On January 13, 1960, a month's extension to reply to the Commission's letter was requested on the representation that Don desired

" . . . to personally verify the information which will be submitted in response to the Commission's inquiry which he cannot do without spending an extended period in California . . . [and] also to assume immediate supervision of the day-to-day operation of KRLA for such period of time as may be necessary to insure himself that the operation of the station is fully in accord with his responsibilities as a licensee." (I.D. 77, as modified by ruling on Exc. 108, R. 950, 1020.)

Appellant's response to the 309 (b) letter, including an amendment of its renewal application, was filed with the Commission on February 15, 1960 (R. 951).

In the amendment, appellant proposed programming based on the week of January 31-February 6, 1960 without any substantial changes "except as may be required to meet changing needs and conditions." With respect to "Agriculture in News," appellant stated:

¹⁵ The program "Spirit of Today" which had been broadcast since December 6 in two one-half hour sessions each Sunday was not a church service and, therefore, Don did not regard it as sufficient fulfillment of the promise.

"Two newscasts a day will have the majority of their content devoted to farm news. They will be broadcast at 5:55 A.M. and 1:55 P.M. and will be 4 minutes, 30 seconds in length. This policy was initiated approximately in October, 1959, with the 1:55 P.M. report given at 11:55 A.M. The change to 1:55 P.M. took place the week of January 18, 1960. A complete agricultural weather forecast is included in each of these newscasts.

"Thirty seconds of agricultural news will be included in every newscast aired on KRLA. This policy was not strictly adhered to prior to January 8, 1960; however, it has been fulfilled from that date on. The content includes pertinent local and national news developments that would interest local farmers and livestock breeders in the Southland. Stock, grain and poultry exchange prices are quoted daily." (R. 352, 952.)

Also included in the category of agricultural programming was a sixty-second program, "Best Buy of the Day," to be broadcast sometime between 11:30 and 11:45 Monday through Friday, and designed to provide shoppers with information, supplied by an official of the Federal State Market News Service, as to the quality and quantity of farm products arriving in Los Angeles. Also classified as agricultural in the amendment was "KRLA Farm Roundup," which appellant stated it had started on January 11, 1960 and expected to continue broadcasting each Monday morning from 5:00 to 5:50. It was described as a show composed of agricultural information (weather conditions, national and local farm news, and recorded music, as well as transcribed comments by various agricultural experts. (R. 351-2, 953.)

H. Alterations in Program Logs

As stated above, the Commission noted in its Section 309(b) letter that its review of the logs for a seven-day period in October, 1959 indicated that they may have been falsified by adding certain religious programs to the entries actually broadcast on those days. The question was whether a 2-minute program "Words for Today" or "Thoughts for the Day" — classified as religious programming — had actually been broadcast on October 18-24, 1959.

The Commission had previously asked for a revised program

log analysis, and logs, for the 7-day period to be submitted with the renewal application and the information was furnished by Schulz on November 12, 1959 (R. 74). Appellant's February 15, 1960 response to the Section 309(b) letter incorporated an affidavit by Schulz in which he stated that the addition to the logs had been made "to reflect what had actually taken place." He explained that instructions had been issued to broadcast "Thought for the Day" as a regular feature beginning the second week of October, 1959; that the programs had actually been broadcast, but that the traffic department had failed to receive instructions to schedule the announcements on the program logs. He further stated that the absence of "Thought for the Day" was noted by him when the program analysis was made for the week of October 18-24 and he had issued instructions that corrective insertions be made in the logs (R. 961.)

Don had no part in, and until he received the 309(b) letter was not aware of, the log alterations. Schulz had not consulted him about either the omissions of the program from the logs or the later insertions inasmuch as Schulz "did not feel it involved a policy decision." (R. 961; Exc. 131, R. 1026.) When Don went to Los Angeles with KRLA's counsel in January 1960 to investigate the several matters raised by the 309 (b) letter, Schulz was questioned thoroughly on the mislogging incident in Heiman's presence. Schulz explained — as he later stated in his affidavit — that the seven two-minute programs had actually been broadcast during October 18-24 and that the logs were altered only to reflect the true facts. Heiman, who was present, did not dispute Schulz' statement and Don accepted the explanation and incorporated the affidavit by Schulz in the response to the Commission. (R. 961, 1026.)

Subsequently, about three weeks before the hearing began, Don learned that the representations made by Schulz were false. Heiman confessed to KRLA's counsel that he had wrongly concurred in Schulz' explanation. Counsel immediately notified the Broadcast Bureau of the true situation. Heiman testified at the hearing that

"Thought for the Day" had in fact not been broadcast during the week of October 18-24, but that Schulz had given instructions that it be nevertheless included in the logs. (R. 961-2.)

I. Memorandum of April 12, 1960

In one of his regular reports to Don, Heiman stated on April 6, 1960, with respect to religious and public service programs:

"We definitely must do something about Sunday. This involves moving our block of discussion and religion to the period 6:00 to 10:00 A.M. if at all possible. I will approach Con Robinson [a representative of the Lake Avenue Congregational Church] this week to investigate the possibilities of a delayed broadcast or, instead a broadcast of their evening service to free us from the 11:00 to 12:00 period for the summer. . . ." (R. 955.)

Heiman outlined a proposal for a revised schedule for the 6:00 to 10:00 A.M. period on Sunday and asked Don:

"Would it be possible to put 'Scope Unlimited' and either 'Seminar' or 'Spirit of Today' on hiatus for the summer? How about 'California' for the summer? Due to the nature of the program, 'Topic Youth' as we know it must be off for the summer." (I.D. 88, R. 955.)

Heiman testified that his request to Don was occasioned by the fact that he felt that with summer approaching and with the tremendous number of people who would be going to resort areas on Sunday, it was important for KRLA to be tuned in on their car radios by 10 o'clock in the morning; otherwise, KRLA would lose them as listeners for the rest of the day (I.D. 89, R. 955).

Don replied to Heiman's memorandum, on April 12, 1960, as follows:

"Just to confirm my feelings about the Sunday religious and public service programming, before doing anything, the following points should be answered in the affirmative:

1. Tommy Dowd [KRLA's counsel] should be consulted and should approve the move —
2. No move should be made until about a month after the FCC has approved KRLA's request for its license renewal.

"At that time, undoubtedly, we will be able to drop

some of the present programming, but we will only do so with the full approval of Pierson, Ball and Dowd, of course." (I.D. 90, R. 956.)

Don explained that his letter to Heiman was occasioned by the fact that:

" . . . we were coming into the summer months, and the schools . . . and the colleges would no longer [be] in session, which would make it extremely difficult for us, if not impossible, to continue such shows as California, Topic Youth, and Seminar." (I.D. 91, R. 956.)

3. INITIAL DECISION

The Hearing Examiners held in appellant's favor on Issue 1 — the good faith of the programming representations in the assignment application. They stated that: "It is shown, upon the record, that heavy financial losses requiring immediate recoupment forced a reexamination of the station's program schedule, and no reason implying more vicious self-interest than an attempt to protect the applicant's investment has been developed by the evidence." Although they found "attempted and realized" departures in programming from the representations made in the assignment application, and noted that a "suspicion . . . lingers" that Don's memorandum to Heiman, April 12, 1960 was prompted by a desire to make only a temporary and token compliance with the programming representations, they concluded that the evidence was insufficient to show that appellant lacked good faith when it filed the assignment application in 1958. (R. 967.)

They also concluded that no adverse finding could be made on Issue 4 — the question of whether legal control had been transferred from Don to Jack. As they construed the evidence, the authority which Jack exercised during the early days of appellant's ownership of KRLA was "similar to that which might have been vested in some other trusted employee charged principally with responsibility for the program department's operations." (R. 966.)

In passing upon Issue 2, the Examiners considered both the

Golden Key and Perry Allen contests and concluded that, although both were to be condemned, they were taking a less stringent view of the matter than would have been the case if KRLA had continued to carry such contests. As for Issue 3 — the alteration of program logs — they concluded that, although Schulz had intended to deceive the Commission, responsibility could not be imputed to Don.

In sum, the Hearing Examiners stated that their ultimate decision favored appellant but the record indicated "censurable managerial immaturity and operational shortcomings." Accordingly, instead of a renewal of license for a full three-year period, they held that the ends of justice and the public interest would be better served by a one-year term. In their view, the question of whether KRLA could be relied upon to continue to deliver on a permanent basis the meritorious service which it had commenced, as well as the general competence of Don to serve as a controlling head and principal policy-maker of the station, could best be answered after an opportunity for surveillance of the station's operations during the forthcoming short-term renewal period. (R. 968-9.)

4. EXCEPTIONS AND PETITION TO REOPEN THE RECORD

Although it acquiesced in the ultimate disposition that the license be renewed for only a one-year period, appellant filed 135 exceptions to the findings of fact contained in the Initial Decision. The Broadcast Bureau noted 16 exceptions and asked the Commission to reverse the Examiners and deny any renewal of license.

On February 27, 1962, after oral argument before the Commission, appellant filed a petition to reopen the record for the receipt of evidence with respect to the then current operations of station KRLA insofar as pertinent to the question of program performance and licensee reliability. The petition enumerated the educational, public service, religious and agricultural programs

which were then being broadcast over KRLA on a regular, sustaining basis, and urged that the Commission would have available to it more meaningful evidence on the point whether KRLA had established a record of service to its community and had demonstrated responsive and responsible management than would be the case if it confined itself only to operations during the first four hectic months in 1959. (R. 1229.)

5. THE DECISION OF THE COMMISSION

On March 15, 1962, the Commission reversed the Examiners and denied appellant's application for renewal (R. 1244.)

It found that the Perry Allen and Golden Key contests were "fraudulent in the sense that various clues which were broadcast . . . were deceptive, and knowingly so." And, although the Commission agreed with the Examiners that Don had not authorized and was unaware of any deceptive clues in the contests — having left a seasoned broadcaster in charge of the details of those contests — and although it likewise agreed that he had not known of the log alterations, it concluded that the record reflected such "ineffective control" and "neglect" of the station on his part as to require appellant's disqualification as a licensee.

The Commission also found that Don had attempted to deceive the Commission as to the nature of KRLA's programming. The incidents upon which this finding were predicated were: (1) the statements contained in the inter-office memoranda between Don, Schulz and Heiman on October 2-5, 1959; (2) "numerous misrepresentations" contained in the February 15, 1960 amendment to the renewal application; and (3) the disposition which Don expressed in his memorandum to Heiman in April, 1960 to drop certain of his proposed programs after the renewal of the license.

Finally, the Commission held that, in view of its conclusions as to the deception practiced upon it, there could be no mitigating circumstances which would justify reopening the record for evidence of the meritorious nature of appellant's programming in

the previous year and its efforts to ascertain and meet the needs of the Los Angeles area. Accordingly, the petition to reopen was denied.

In an Appendix to its decision, the Commission granted 43 of appellant's exceptions in whole, 17 in part, and 13 "in substance." The remainder were denied. Two of the Broadcast Bureau's exceptions were granted without qualification, three were granted "to the extent reflected in the decision" or "as reflected in the decision," and the rest denied.

6. PETITION FOR RECONSIDERATION

In a petition for reconsideration filed April 18, 1962, appellant urged that the Commission had decided the case on issues which had not been included in the order designating the applications for hearing; specifically, that there had been no issues as to whether Don had neglected the station or had attempted to deceive the Commission.¹⁶ Appellant claimed surprise and asked for an opportunity to contest these new matters.

On the merits of the pivotal findings, appellant pointed out that the Commission had seized upon isolated events during a short, extraordinary period in the life of the station when it was in the throes of getting started on a new programming format, with a new staff and a new physical installation. It contended that the family and personal reasons which caused Don to be away from the station at the times that these events occurred were of such a compelling nature as to refute any finding that he was indifferent or irresponsible with respect to the manner in which the station was operated. Appellant asserted that these reasons were omitted from the record in reliance upon the presiding Examiner's stated position that no useful purpose would be served by disclosing such details.¹⁷ Appellant urged that since the reasons became significant

¹⁶ It was also pointed out that the order of designation refers to only a single contest — the Find Perry Allen contest — whereas the Commission's decision was based also on the Golden Key contest.

¹⁷ The exact nature of Don's reasons for returning to New York City
(Continued on next page)

only in light of the new issues and the Examiner was in effect being overruled on the point, an opportunity should be afforded to bring these reasons to the Commission's attention by making them part of a record on rehearing. (R. 1294.)

7. COMMISSION'S DENIAL OF PETITION FOR RECONSIDERATION

In its Memorandum Opinion and Order adopted on July 18, 1962, the Commission denied the petition for reconsideration. It acknowledged again that Don had not personally countenanced either the manner in which the contests were conducted or the alteration of the program logs by the station manager, but it held him accountable, nevertheless, because ". . . lack of familiarity with station operation and management may reflect an indifference tantamount to lack of control" The Commission also adhered to its finding that Don was guilty of efforts to mislead the Commission. (R. 1548.)

STATUTES AND REGULATIONS INVOLVED

The relevant portions of the Constitution, the Communications Act, the Administrative Procedure Act, and the Rules and Regulations of the Federal Communications Commission are set forth in Appendix A, *infra*.

(Fn. 17 continued)

on August 21, 1959, does not appear in the transcript of the hearing. In the petition for reconsideration, appellant's counsel asserted that it had disclosed, in an off-the-record conference with the Hearing Examiner and counsel for the Broadcast Bureau, the family reasons which compelled Don to leave Los Angeles at that time. An offer was made to disclose the situation upon the record if it were deemed necessary but, in view of the delicate nature of the subject matter, the hope was expressed that it would not be necessary to do so. The Hearing Examiner advised counsel, in substance, that so far as he was concerned, such evidence would have no decisional value. (R. 1308.)

Although the Broadcast Bureau opposed a rehearing, at no point did it dispute appellant's factual assertions as to the off-the-record discussions (R. 1420).

STATEMENT OF POINTS

1. The Commission's procedure violated elementary standards of fairness in that crucial issues were resolved adversely to appellant without an opportunity to be heard on those issues.
2. The pivotal finding of attempted deception is based upon arbitrary inferences and is unsupported by substantial evidence.
3. The finding that Donald Cooke was irresponsible and neglected the station's operation is unsupported by substantial evidence on the record considered as a whole.
4. In rejecting, as of no decisional value, evidence that KRLA's programming was meritorious and served the needs of the community, the Commission failed to consider an essential facet of public interest, convenience and necessity.
5. The Commission's basic findings were so dispersed among the parts of the Initial Decision which it adopted, the Exceptions to the Initial Decision which it granted, and the Final Decision which it issued as to have precluded an intelligent use of basic findings by the Commission in reaching its ultimate findings.

SUMMARY OF ARGUMENT

I. A grave procedural error was committed by the Commission in that the pivotal findings on which the decision rests were not litigated by either side. The Commission, in its final decision, went far beyond the scope of the four specific issues designated for hearing. The issue as to whether or not Don had transferred legal control to his brother did not apprise appellant that it had the burden of proving that the station had been well managed by Don; and the issue of whether or not program proposals were made in good faith in 1958 did not serve to apprise appellant that programming representations in 1959 or 1960 would be construed as attempts in those later years to deceive the Commission. Nor did the two other specific issues give notice of the matters on which the Commission bottomed its decision.

The deficiency in notice and opportunity to be heard was not cured by the inclusion of a catch-all issue to determine, "in light

of all the evidence adduced," whether the public interest would be served by renewing the license. This was merely conclusionary and did not notify appellant of the particular grounds on which it had the burden of proceeding with evidence and the burden of proof as required by Section 309 (b) of the Communications Act.

As soon as appellant knew of these new claims of the Commission, it asked for an opportunity to contest them and show the Commission how it had been misled into trying the case only on the specific issues. The procedural error which the Commission committed in refusing to reopen the record to take additional evidence constitutes such a deprivation of constitutional and statutory due process as to require reversal of the decision below on that ground alone.

II. The main reason for taking away appellant's license was the finding that Don Cooke attempted to deceive the Commission. An analysis of the incidents upon which the Commission based this critical finding will demonstrate that the Commission piled inference upon inference without reason, and in most instances upon speculation only, rather than proven subsidiary facts. Its findings, therefore, were unsupported by substantial evidence.

Even though Don was found innocent of any deception with respect to the alteration of the program logs and no bad faith was attributed to him with respect to representations in the 1958 application, the Commission deduced a proclivity on his part to mislead by stringing together several innocuous expressions used in inter-office memoranda and innocent representations in the 1960 amendment.

Unwarranted stress was placed by the Commission upon the fact that Don told his staff that he was "not anxious to run afoul of the FCC"; suggested that certain programming changes would "fill the bill"; and asked whether certain other changes would "pass muster." All that could have been inferred from these expressions was that doubts had arisen as to the feasibility or

desirability of certain programming which had been proposed the previous year, and that Don was requesting his staff to evaluate possible changes with respect to the applicability of the Commission's policy of comparing promise vis-a-vis performance. At no time was any suggestion made that changes in programming should be concealed from the Commission and, indeed, no findings were made that changes were in fact concealed from the Commission.

The "numerous misrepresentations" which the Commission purported to find in the February 1960 amendment turn out upon examination to comprise four statements which cannot be said to support any finding whatever of attempted deception. For example, it was wholly impermissible for the Commission to infer falsity in a representation that a certain event occurred when there was no evidence that it did not occur — merely testimony of one witness that he did not recall the event.

The Commission found confirmation of its suspicions that Don was willing to connive with employees to deceive the Commission in the fact that he indicated a willingness to suspend certain programs for the summer — but told his program director not to make any changes while the license renewal was pending. There was no reason whatever to infer that Don, who specifically instructed his program director to consult with the station's FCC counsel before making any changes in programming, would not have disclosed to the Commission whatever changes were ultimately decided upon. Moreover, the Commission does not expect literal compliance with program representations when intervening events make them inadvisable.

III. The Commission acknowledged that isolated errors such as occurred during the first few hectic months of appellant's operation of KRLA could have occurred "even in the best-managed operation." Nevertheless, it condemned appellant because Don Cooke happened to have been absent from the station during part of this period, was not a master of all of the many details of the

station's operation, and hence was not successful in assuring an error-free operation.

The Commission knew, when it approved appellant's purchase of the station, that Don would continue to reside in New York where he had another business and that he would rely upon employees for the day-to-day management of the station in California. Don carefully chose broadcasters whose reputation and experience would have led any employer to believe that he could safely and successfully delegate responsibility to them to take care of the details of programming (under policies which he formulated) and to keep the programming logs in accordance with the Commission's rules. The fact that these duties were not properly discharged in all respects while he was away from the station on urgent personal matters does not justify the characterization of Don as irresponsible and neglectful of the station's interest.

IV. If, as the Commission indicated, the "ultimate" issue in this proceeding was whether, in the light of all the evidence adduced in the hearing, the public interest would be served by a renewal, it erred in refusing to take account of the meritorious programming of station KRLA and the needs and desires of the community for that service as shown in the record. While the weighing of competing public interest factors such as these is, of course, a matter for the Commission, its avoidance of that duty in this case vitiates its ultimate conclusion that taking KRLA off the air is in the public interest. Furthermore, it could not legitimately have said that certain programs do "not outweigh the considerations underlying the conclusions in the decision" while at the same time rejecting evidence of the programming as being without decisional significance.

V. In the appendix to its final decision the Commission granted some 73 exceptions to the findings of the examiners. Some of the exceptions were granted in full, some in part and others "in substance" or "to the extent reflected in the decision."

These rulings effected extensive modifications in the basic findings in the initial decision. In failing to rewrite its decision as a single document incorporating all the findings upon which it rested its conclusions, the Commission has given rise to grave doubts that, realistically, it could have considered them in context so as to have reached properly reasoned ultimate findings. In short, the Commission's basic findings were so fragmented that unless they had been collected in one document, it was almost impossible for a trier of fact to have taken them properly into account.

Our doubts are compounded by the fact that the Commission's opinion and order on reconsideration as set forth in the official reports published by the U. S. Government Printing Office is different from the version which is part of the record in this Court. The Commission's apparent confusion is further reflected in the fact that the stated reasons for denying the renewal of KRLA's license are different in the Commission's Annual Report to Congress from those contained in the decision.

ARGUMENT

I. The Commission's Procedure Violated Elementary Standards of Fairness in That Crucial Issues Were Resolved Adversely to Appellant Without Affording it an Opportunity to be Heard on Those Issues.

The Commission's refusal to renew KRLA's license was bottomed upon findings that Don Cooke was guilty of attempts to mislead the Commission and that he had not demonstrated responsible management of the station. These matters were outside the specific issues under which the hearing was held. The Commission attempted to justify its action on the ground that "the ultimate question posed by the hearing issues was whether a renewal of Eleven Ten's license would be in the public interest," and that "[v]iewed collectively, the facts adduced pursuant to the good faith, Perry Allen, mislogging and alien control issues lead . . . inevitably to the conclusion that it is not in the public interest to renew . . . in view of" its findings of Don's irresponsible man-

agement and attempts to deceive. We submit that the Commission's procedure violated the statutory requirement of a fair and "full" hearing (section 309(b) of the Communications Act)¹⁸ and the constitutional requirement of due process of law.

The so-called "ultimate question" relied upon by the Commission — "To determine, in light of the evidence adduced pursuant to the foregoing [specified] issues whether a grant . . . would serve the public interest, convenience or necessity" — was merely conclusionary, did not itself call for any evidence, and did not notify the parties of the subject matter on which appellant had the burden of proceeding with evidence and the burden of proof, as required by Section 309(b).¹⁹

Of necessity, evidence introduced at the hearing by both appellant and the Broadcast Bureau was directed only to the four specific issues framed by the Commission. Those issues were substantially different in their essential thrust from the issues on which the decision turned. For example, the issue as to whether or not Don transferred legal control in violation of Section 310(b) of the Act did not give notice to appellant that it had to prove that the station had been well managed by Don; and the issue of whether or not program proposals were made in 1958 in good faith did not serve to apprise appellant that programming representations in 1959 or 1960 would be construed as attempts in those later years to deceive the Commission.²⁰

¹⁸ 47 U.S.C. 309(b). This provision is set forth fully in Appendix A, infra.

¹⁹ The Commission's rules provide for "motions to enlarge, change or delete issues," 47 C.F.R. Sec. 1.141. The Commission has recognized, in acting upon such motions, that under the statutory requirements, the "ultimate" conclusionary issue does not mean that evidence adduced under the specific issues will be considered for every impact whatsoever upon general public interest criteria. Cf. Sunbury Broadcasting Corp., 20 RR 1 (1960) and Broadcasters, Inc., 16 RR 295 (1957). As used in this brief, "RR" refers to Pike and Fischer, Radio Regulation.

²⁰ The Commission's distorted concept of adequate notice is also reflected in its ruling denying Exception 58 in which it stated: "The specific

(Continued on following page)

We are not contending that the Commission may not decide a case on matters other than those originally set forth in the formal order of designation if those matters are actually litigated. But, as this Court noted in *Kuhn v. CAB*, the *sine qua non* for allowance of new or different issues is "that there has been actual notice and adequate opportunity to cure surprise . . . and it is clear that the parties understand exactly what the issues are when the proceedings are had."²¹ Thus, the Commission should have reopened the record to give appellant a fair opportunity to meet charges of deception and indifference on the part of Don. The prejudice inflicted upon appellant by the Commission's failure to do so was substantial.

It is one thing to impose upon a litigant the burden of proceeding and the burden of proof with respect to an issue of which it has notice; it is quite another thing to say that a litigant has the burden of negating every facet of a conceivably adverse public interest inference that might be placed on the evidence which is adduced in the hearing. In the first case, there is a reasonable point at which a litigant may rest, satisfied that it has met its burden; in the latter case, it would be impossible for it ever to reach an intelligent judgment as to whether or not its burden has been met. The statutory requirement in Section 309(b) that the Commission "shall notify the applicant . . . [of] the grounds and reasons [for holding the hearing] specifying with particularity the matters and things in issue but not including issues or requirements phrased generally . . ." is nullified by a procedure which permits the Commission to bypass specified issues and to rest its decision on unanticipated issues formulated in the light of evidence adduced under the pleadings.

If appellant had known that the case involved an issue as to

(Fn. 20, continued)

issue on the Perry Allen contest was designed to adduce evidence to aid in determining whether Eleven Ten operated KRLA for improper purposes. Evidence concerning any other questionable contest conducted by KRLA is material for the same reason. (Emphasis added) (R. 1257.)

²¹ 87 U.S. App. D.C. 130, 133, 183 F.2d 839, 841-842 (1950). (Emphasis added)

whether or not Don had attempted to deceive the Commission in 1959 and 1960, it could and would have offered testimony which would have successfully refuted any deceptive intent or motive. And, certainly, such minor factual discrepancies as may appear in the record and which the Commission seized upon as proof of misrepresentations could have been adequately explained. But, as the issues were framed, such discrepancies were not material. The only point of concern was whether the programming promises in the 1958 assignment application had been made in good faith. It was only in the final decision that attempted deception *vel non* by Don in 1959 and 1960 with respect to programming changes and representations became an issue and converted mistakes, though trivial, into marks of deceit.

The Commission acknowledged that "We did not, and do not, say that Don knew of or personally countenanced either the log alterations or the manner in which the contest was conducted." Issue 1 (the good faith of the 1958 representations) and Issue 4 (the alien control issue) were also resolved favorably to appellant.²² Nevertheless, the Commission proceeded to hold, purportedly on the basis of evidence adduced under these four issues, that Don had connived with employees to deceive the Commission.

The Commission also erred in its treatment of Don's personal participation in the operation of the station. The only issue actually litigated which may reasonably be said to have called for evidence relating to that point was Issue 4. In view of the evidence on that issue, appellant was justified in concluding that little or no risk was involved in choosing not to reveal on the public record the exact nature of the family reasons for Don's departure from the station during the critical early days of its opera-

²² The Examiners decided both issues in appellant's favor and the Commission, by adopting the Examiners' findings without any indications to the contrary on these issues, manifestly concurred in the Examiners' disposition of them. In its opinion denying reconsideration on July 18, 1962, it sought to backtrack to the extent of stating that the issues "need not be resolved." (R. 1551.)

tion. If it had anticipated, however, that the crucial issue would be — not a comparison of Don's versus Jack's control — but rather whether Don had manifested "indifference" to the day-to-day management by his absence from the station, appellant would have been constrained to make the reasons for Don's absence a matter of record, however painful the public disclosure of those delicate reasons might have been.

The inference as to the scope or depth of Don's interest in the operation of the station which may logically be drawn from his absence during this period depends largely on his reasons for being away from the station. Obviously, if he left to attend a series of social engagements, the inference might well be different from that which would obtain if he left to attend to pressing needs of his child arising from a serious illness of his wife. As soon as appellant was apprised (by the Commission's final decision) of the importance to the case of a full disclosure of Don's reasons for being absent from the station, it asked for an opportunity to disclose them on the record. The Commission's refusal to afford it that opportunity does not comport with the constitutional requirements of a fair hearing.

As the Supreme Court stated, "The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them" In *Brahy v. Federal Radio Commission*, 61 App. D.C. 204, 205, 59 F.2d 879, 880 (1932), this Court emphasized that "While the burden is on the applicant for a renewal of license ... justice requires that he should receive notice of charges a sufficient time in advance of the hearing to enable him to present his defense." In *Brahy*, the deficiency was cured when the applicant elected to proceed after being apprised by the Commission that the hearing would be broader in scope than originally planned. That, however, is not true in the instant case. At no time did appellant

²³ *Morgan v. United States*, 304 U.S. 1, 18-19 (1938). See also, *Gonzalez v. United States*, 348 U.S. 407, 413-414 (1955).

have notice that matters other than those listed in the four specific issues were in controversy.

Parties are entitled to have issues clearly framed in advance of the final decision and an opportunity to contest them "even though the foundation was the evidence of their own witness which was given in the course of his testimony with reference to the original charge." *NLRB v. Kanmak Mills*, 200 F.2d 542, 545 (3d Cir. 1952).²⁴ The charges upon which the case was tried had much to do with how appellant's counsel examined his own witnesses and how he cross-examined the Commission's witnesses. Moreover, in the absence of a clear purpose for which evidence is adduced, the opportunity afforded under Section 8 (b) of the Administrative Procedure Act to submit proposed findings and conclusions is meaningless. In its proposed findings, appellant addressed itself to the four specified issues. It did not attempt to refute attempted deception of the Commission or irresponsible management by Don. How, then, could the Commission reasonably conclude that appellant "was given ample opportunity to explore the evidence" and, therefore, that reopening of the record was unnecessary?

The need for specificity in issues is especially acute when, as here, the agency is in effect the complainant, prosecutor and trier of fact. The decision to take away appellant's license — even though the grounds which were originally expected to justify such drastic action fell by the wayside — represents, in our view, an unfortunate incidence of combining the three roles. The Commission should not be allowed to put a licensee on notice that it is charged with specific offenses and then find, by making every adverse inference possible from the evidence, that it is guilty, not of those offenses, but of others.

²⁴ Cf. *Freitag v. The Strand of Atlantic City*, 205 F.2d 778 (3d Cir. 1953); *National Labor Relations Board v. Bradley Washfountain Co.*, 192 F.2d 144, 149 (7th Cir. 1951); *Gallon v. Lloyd-Thomas Company*, 264 F.2d 821, 825 (n.3) (8th Cir. 1959); *Otness v. United States*, 23 F.R.D. 279 (D. Alaska 1959).

Moreover, in a case in which a renewal is withheld because of alleged misconduct, the proceeding is so substantially akin to a revocation proceeding that to differentiate between the procedural protection with respect to notice and hearing is to ignore the realities. The practical effect of denying a renewal — loss of investment — is the same as in the case of revocation; agency practice indicates that the two situations are often treated substantially alike; and procedural safeguards — at least of adequate notice and an opportunity to be heard — are vital in both instances.²⁵

In Points II and III of this brief, the lack of merit in the findings on which the Commission based its decision will be demonstrated. We suggest, however, that the procedural errors set forth in this Point I, standing alone, constitute such a deprivation of due process and statutory rights as to require reversal of the Commission's decision.

II. The Commission's Pivotal Finding of Attempted Deception is Based Upon Arbitrary Inferences and is Unsupported by Substantial Evidence.

Agency action must, of course, be set aside if it is unsupported by substantial evidence. Inferences which are intrinsically unreasonable or so attenuated as to amount to no more than a pyramiding of probabilities cannot be held to be "reliable, probative and substantial evidence."²⁶ An analysis of the facts upon

²⁵ "[R]evocation proceedings are very rare. It is in renewal proceedings that procedural safeguards, if they are possible, are most vitally needed." New York University Law School Institute, the Federal Administrative Procedure Act, and the Administrative Agencies 96, quoted in "Procedural Safeguards for Licensees: Section 9(b) of the APA", 75 Harvard Law Review 383, 386 (1961). Cf. *Churchill Tabernacle v. Federal Communications Commission*, 81 U.S. App. D.C. 411, 414, 160 F.2d 244, 247 (1947).

²⁶ Administrative Procedure Act, Sec. 7(c), 10(e), 5 U.S.C. 1006(c), 1009(e), (Appendix A, *infra*). The question for a reviewing court is whether the findings and conclusions "reasonably may be based upon the facts proven." *Radio Officers Union v. National Labor Relations Board*, 347 U.S. 17, 49 (1954).

which the Commission sought to bottom its critical findings of attempted deception will establish that grievous error was committed in piling inferences upon inferences without reason, and, in most instances, upon speculation only, rather than upon proven subsidiary facts.

To focus attention upon the perimeters of the stated premises for the finding, it must be emphasized again that Don was found innocent of any deception in the log alteration incident and that no bad faith, let alone attempts at deception, were found in the representations made in the 1958 assignment application. The only subsidiary "facts" relied upon by the Commission as predicates for finding Don guilty of attempts to deceive were the following:

- (1) That "numerous misrepresentations" are contained in the February 15, 1960 amendment of the renewal application.
- (2) That the inter-office memoranda of October 2-5, 1959 between Don, Schulz, and Heiman established that Don suggested ways in which KRLA's programming might be changed "and yet be made to appear as conforming with the programming proposals made at the time of transfer and in the renewal application."
- (3) That in the same memoranda he "apparently . . . acquiesced" in suggestions by his station manager which included a "deliberate plan to misrepresent the true character" of a certain 15-minute program.
- (4) That in his memorandum of April 12, 1962, he indicated "a willingness to drop certain programs proposed in the amended renewal application — but in no event until after the renewal application was granted."²⁷

An examination of these four items will reveal the flimsiness of the foundation upon which the Commission rationalized its drastic action in taking away appellant's license.

²⁷ In its opinion denying reconsideration, the Commission stated: "The facts upon which the Commission rests its conclusions in this area [Don's efforts to mislead the Commission] are set forth in great detail in paragraphs 8-12 of our decision [of March 15, 1962] ." (R. 1551.)

(1) "Numerous Misrepresentations" in the
February 15, 1960 Amendment

(a) The Commission erroneously found that appellant misrepresented in stating that "KRLA Farm Roundup" had been broadcast since January 11, 1960, whereas a disc jockey who was on duty at the scheduled time testified that he "did not recall" having broadcast one of the segments of that program. Is it permissible, however, for a trier of fact to infer falsity in a representation that a certain event occurred when no positive contradictory evidence was adduced but merely testimony that one witness "did not recall" whether or not it occurred?²⁸

Heiman testified that he had instructed Allen to play the transcribed segments and that he understood, on the basis of subsequent discussions with Allen, that they had been played (Tr. 989). There was no basis for inferring the contrary merely because Allen failed to recall whether or not he had broadcast them.

Moreover, in view of Heiman's testimony that he had prepared this portion of the amended renewal application (Tr. 986), there was no reason to pile on the further damaging inference that Don had attempted to deceive the Commission in representing that all of KRLA "Farm Roundup" had been broadcast since January 11. The Commission based a decision on pure surmise when there was probative evidence to the contrary.

(b) The Commission erroneously found that appellant had misrepresented in listing a program, "Best Buy of the Day," as agricultural programming, whereas the program director, Heiman, "subsequently testified that it was not properly so classified." On the contrary, even if, upon reconsideration, Heiman had determined the classification was erroneous — which was not the

²⁸ The Examiners made the most extreme finding which could have been made from Allen's testimony, i.e., "It is not clear from the record whether the transcribed portions were broadcast directly over KRLA before or after February 15, 1960." (I.D. 84, R. 954.) Cf. Pennsylvania Railroad Co. v. Chamberlain, 288 U.S. 333, 340-341 (1933).

case²⁹ — such a change of opinion would not support an inference of wilful misrepresentation. Of critical importance, moreover, the record establishes that the facts upon which the classification was made, including the title and nature of the program involved, were fully disclosed to the Commission. At worst, this incident represents merely a reasonable difference of opinion as to the classification of a program.³⁰

Appellant acted reasonably in relying upon the advice of its program director as to the proper classification of a particular program under the Commission's rules. The Commission's inference of an attempt to deceive rested, it appears, upon unwarranted speculation that Don must have been informed by Heiman that this program could not properly be classified as agricultural and, in the face of such advice, Don nevertheless so classified it in the renewal application. This is another illustration of the Commission's predilection to force innocuous conduct into a "Procrustean bed" of deceptive practices.

(c) The Commission erroneously found that appellant had misrepresented in stating that 30 seconds of agricultural news would be included in every newscast, even though the policy was "not strictly adhered to" prior to January 8, 1960. Although it was uncontroverted that KRLA included farm news on every newscast after January 8, as represented, the Commission held that the use of the phrase "not strictly adhered to" carried the

²⁹ His testimony on this point was ambiguous (Tr. 980-984). Moreover, neither the Examiner nor the Commission found that "Best Buy of the Day" could not be classified properly as "agricultural programming."

³⁰ The only description of "agricultural" programs of which applicants for renewal are apprised is contained in the application form, which states: "Agricultural (include here all programs containing farm or market reports or other information specifically addressed to the agricultural population)." FCC Form 303, Sec. IV, incorporated in the Commission's Rules and Regulations, 47 C.F.R. Sec. 1.328. The Commission has recognized that the misclassification of a program under the Commission's program categories, which are broad and ambiguous in nature and subject to varying interpretations, does not reflect adversely upon a licensee's character. Florida Gulfcoast Broadcasters, Inc., 23 RR 1 (1962).

implication that it was also the general practice to do so prior to January 8. This was deemed inconsistent with the view expressed by Don in October, 1959, that a 30-second farm market report on less than all newscasts would suffice; and that he was informed by his manager and program director in October, 1959 that only a few newscasts would carry farm information daily.

We must agree that Heiman could have used clearer language than "not strictly adhered to" in referring to pre-January 8 programming. But, how picayune can the Commission be? In context, the reference was obviously parenthetical. The essential thrust of the amendment was to disclose to the Commission what the station was doing during the week commencing January 31, 1960, upon which it based its future program plans. (R. 238, 951.)

The exaggerated emphasis placed by the Commission upon the word "strictly" underscores the prejudice to appellant in not having had a specific issue in the case on attempted deception with respect to programming. No inquiry was made of Heiman or Don, both of whom testified, as to why or in what sense the word was used. Neither appellant's counsel nor Commission counsel discussed the point. When, in the final decision, the use of the word became significant, appellant's counsel, who had participated in the efforts made to compile a complete and accurate response to the Commission's letter of December 15, 1959, asked for an opportunity to demonstrate that the response was based upon information furnished by the staff which there was no reason to doubt, and that any inaccuracies were unintentional. In denying the request, the Commission, we submit, unreasonably charged counsel with notice that Heiman's use of the word "strictly" tended to prove misrepresentation when, indeed, there was not even an issue in the case as to accuracy of the amendment.

(d) The Commission erroneously found that appellant had misrepresented in stating that a policy of broadcasting at 5:55 A.M. and 11:55 A.M. 4-1/2 minutes of newscasts "devoted to farm news"

had been initiated approximately³¹ in October of 1959, whereas, "in contrast to this statement, Schulz on October 5, 1959 advised Donald Cooke that there would be broadcast a '40-second market roundup in the 5:55 A.M. and 11:55 A.M. newscasts.'"

In inferring that Schulz' report as of October 5 excluded any possibility that KRLA could have thereafter initiated a policy of devoting 4-1/2 minutes to farm news during the 5:55 A.M. and 11:55 A.M. periods, the Commission ignored the rapid changes being made at the station during this critical period. Nowhere is there any finding that KRLA did not in fact carry 4-1/2 minutes of farm news starting in late October or early November, 1959. If, as the Commission preferred to believe, the only agricultural programming was the 40-second market roundup twice a day and two 2-minute "featurettes" a day, agricultural programming would have aggregated only about 37 minutes a week. However, in the amendment filed by Schulz on November 12, 1959 (which the Commission chose to ignore), 1 hour, 12 minutes weekly was shown to be devoted to agricultural programs. (R. 74.) There was, therefore, ample basis in the record for reconciliation of the statement in the February amendment with the facts of agricultural programming in late October or early November.³² It was unreasonable, we submit, to have stopped with Schulz' reply of October 5 and to have inferred therefrom that it precluded the possibility of the additional farm news during a period characterized as "approximately" in October.

³¹ This qualification does not appear in the text of the Commission decision. The Commission refers to the policy as having been represented to have been initiated "in October of 1959." In its ruling on Exception 111, however, it stated that "approximately" is inserted after the word "initiated."

³² In the November 12, 1959 amendment, Schulz stated that: "The station's basic policy contemplates agricultural information and it is proposed to continue to increase the agricultural content of the news and weather programs to the degree indicated by the percentages . . . [at that time, 1.32% or about 2 1/4 hours a week]." (R. 174.)

(2) "Willingness to Connive" in the October, 1959 Memoranda.

The finding that Don "demonstrated a willingness to connive with the station employees to hoodwink the Commission" rested largely upon an inference that he suggested that changes in KRLA's programming should be made in such a way as to "be made to appear as conforming with the programming proposals." An examination of the inter-office memoranda of October 2-5, 1959 between Don, Schulz and Heiman, upon which the Commission based this finding, will show how far afield the Commission traveled to reach unwarranted inferences as to Don's motives and intentions.

There is nothing of a deceptive nature in Don's acknowledgment that, while he had proposed a farm report on each newscast in the program schedule submitted in 1958, "I regret now that I did so." The Commission has repeatedly stated that it is the responsibility of management to keep its programming flexible and that changes which the stations find, upon experience, to be desirable — from a consideration of the changing needs and desires of the community — should be made.³³ At no time has the Commission held that program proposals are frozen and must be produced exactly as represented.

The Commission attributed sinister motives to Don because of three expressions used by him: (a) subject to concurrence of his professional staff, he thought a 30-second farm market report on certain specific newscasts rather than on all 24 newscasts a day would "fill the bill"; (b) "I am not anxious to run afoul of the FCC"; and (c) regarding changes in the scheduling of religious programming, "would this pass muster?"

³³ Report and Statement of Policy Re: Commission En Banc Programming Inquiry, 20 RR 1901. In re Application of KORD, 21 RR 781-785 (1961), the Commission stated " . . . we fully recognize that the public interest vis-a-vis a programming format in a particular community is not a fixed, immutable concept. On the contrary, we hope and expect the licensee to be responsive to the changing needs of the community." See also, n.3, p.784.

The expression "fill the bill" was tortured into an inference that Don was suggesting that changes in the times that farm market reports would be carried on newscasts should be made but that they should continue to be made to appear to the Commission in a different guise. This inference is completely unwarranted. Don's obvious concern in using the expression was that appellant's performance of agricultural programming be close enough to its promise as to meet the Commission's requirements.³⁴

The sentence, "I am not anxious to run afoul of the FCC," followed his exhortation to his program director to give serious attention to agricultural programming. In context, was this anything more than evidence of Don's concern that his performance be judged adequate by the Commission?

Finally, in asking his professional staff whether, "In order to conform with our promises to the FCC" a particular church broadcast would have to be continued and, if so, whether it could be moved to an earlier period, Don used the expression, "Would this pass muster?" Again, this merely indicates that Don was seeking the advice of qualified employees in the programming field as to how flexible a station's programming may properly be under the Commission's rules.

There was no indication whatever that, if the modifications discussed by Don had been decided upon and had been put into effect, their exact nature would have been hidden from the Commission. All that reasonably can be inferred from the memorandum and the responses was that Don had become doubtful of the feasibility or desirability of certain programming which he had proposed the previous year, and that he requested an evaluation by his staff of possible changes upon the basis of their experience; in connection with that evaluation he asked them to give

³⁴ Thus, in the same memorandum, Don expressed disagreement with the general manager's suggestion that farm market reports be incorporated in the form of "Tips to Housewives" because "I don't see how this would help KRLA conform to its proposed broadcast schedule." (R.945)

careful attention to the possible applicability of the Commission's well-published policy of comparing promise vis-a-vis performance. At no point was any suggestion made that the changes should be concealed from the Commission, and, indeed, no findings were made either by the Examiners or the Commission that they were in fact concealed from the Commission.³⁵

(3) "Apparent Acquiescence" in "Plan to Misrepresent."

The Commission also found an attempt to deceive in the fact that Don asked Schulz and Heiman if, in their opinion, the proposal to schedule a 15-minute "talk" program would be sufficiently met if, as suggested to him, the station broadcast a public announcement in that period, without any commercial announcements, or whether it was necessary to carry a 15-minute talk. Schulz advised Don that "We do not have to fill the entire 15 minutes with gab"; that a public service spot announcement of one minute in a non-commercial 1/4-hour with the remaining 14 minutes consisting of music would permit KRLA to log the entire 15-minute segment as public service programming. The Commission then jumped to the conclusion that "Apparently Donald Cooke acquiesced in this suggestion by Schulz, notwithstanding the fact that that included a deliberate plan to misrepresent the true character of the program which was to be broadcast." Whether Schulz was right or wrong in his advice — incidentally, many broadcasters would have taken the same position³⁶ — and whether or not logging of the program in the manner proposed by him, if actually

³⁵ In this connection, the Commission, though charged with the duty of making findings upon the whole record, ignored the facts disclosed in amendments to the renewal application on September 30, 1959 and again on November 12, 1959, in which appellant advised the Commission that experience had demonstrated the need for program changes from the schedule shown in the assignment application and that changes had in fact been instituted. (R. 55, 73.) The Examiners did not make any findings with respect to these amendments presumably because, in the absence of any issue as to concealment, they were not pertinent to the case as tried.

³⁶ On October 11, 1962, the Commission issued a Public Notice (FCC
(Continued on next page)

done, would have constituted deliberate misrepresentation, there was still no basis for the Commission to infer that Don "apparently . . . acquiesced" therein. There is absolutely nothing in the record to show that a program such as Schulz envisaged was ever broadcast or that it was represented to the Commission as having been different from what in fact it was.

(4) "Willingness to Drop" Certain Programs After Renewal.

The suspicion that Don attempted to hoodwink the Commission was confirmed, in the Commission's view, by the fact that in April, 1960, he "indicated his willingness to drop certain of the proposed programs — but not until after the license had been renewed." The inference that Don thereby attempted to deceive the Commission was totally unwarranted.

The facts of this incident are not in dispute. They are set forth fully in paragraphs 88-91 of the Initial Decision. Fairly read in context, and taking into account the series of Commission inquiries on KRLA's programming to which Don had been subjected, his memorandum merely showed that he was reluctant to authorize even the slightest changes in programming — however advisable they might be from the standpoint of meeting summer problems — until disposition of the pending application. The Commission cannot deny that shifting programs from one time of the day to another, and substituting programs during the summer season when closing of schools and colleges may make regular educational programs and discussion programs difficult to pro-

(Fn. 36 continued)

62-1049) in which attention was called to the widespread practice of broadcasters of classifying non-commercial spot announcements as program material. It referred to the fact that a number of applicants for renewal of licenses have broadcast one or more non-commercial spot announcements relating to school safety or other public service topics within a time segment consisting primarily of recorded music and then categorized the entire time segment as "educational" or "talks" or "public service." Although the Commission held that these practices were inaccurate, applicants were given the opportunity to re-compute the amount of time devoted to talks, educational programs, etc., and to amend their applications accordingly.

duce, is a proper function of responsible station management.³⁷

Moreover, the Commission does not tell us whether they construed Don's memorandum as reflecting that he lacked good faith when he filed the February 15 amendment,³⁸ or that he intended to make changes after the renewal without notifying the Commission. Only if one started with a presumption that Don was bent upon misleading the Commission in whatever he did, could one have inferred from the April 12 memorandum that KRLA "was disposed to deceit in the programming it would present after the renewal of its license." There was no other basis for inferring that appellant would not have disclosed to the Commission whatever changes in programming were made for the summer season. Is it reasonable to assume that an employer who instructed his staff to check with the station's FCC counsel before making any changes was at the same time "attempting to hoodwink or deceive the Commission? Although Donald Cooke may have had limitations from the standpoint of broadcast experience, the conclusion that he would have lied to the Commission cannot be allowed to stand. The Commission indulged in speculations and conjectures that should not be countenanced in any quasi-judicial body. To deprive Don of valuable property but, even more importantly, of his good reputation, based on the kind of reasoning resorted to by the Commission, is a denial of due process of law.

Finally, the Commission's reliance on *FCC v. WOKO, Inc.*, 329 U.S. 223 (1946) was misplaced. In that case, the Commission

³⁷ The Commission does not expect literal compliance with programming representations when intervening events make them inadvisable. *McClatchy Broadcasting Co.*, 9 RR 1190, 1208 (1954); *Superior Television, Inc.*, 11 RR 1173, 1230 (1956); *Fernandina Beach Broadcasters*, 25 FCC 234, 17 RR 517 (1958).

³⁸ The Commission has held on numerous occasions that the fact that performance differed from promise does not establish that the promises were fraudulently made. See, e.g., *Sevier Valley Broadcasting Corp.*, 7 RR 327 (1952); *Rev. J. Richard Sneed*, 15 RR 158 (1957); *Telrad, Inc.*, 16 RR 231 (1958).

had found, and the Court referred to the fact, that the station had carried on a systematic course of deception for a 12-year period. Furthermore, in its brief in the Supreme Court, the Commission took the following position (p. 33):

"It may readily be admitted that before the Commission can properly deny an application on the basis of misstatements, it must, of course, determine whether the misstatements are so serious and were made under such circumstances as to warrant a conclusion that the applicant cannot be entrusted with the responsibilities of a licensee. It might well be unreasonable for the Commission to reach such a conclusion on the basis of isolated and insignificant misstatements, or ones resulting from inadvertence or misunderstandings." (Emphasis added.)

In the instant case, the Commission went well beyond the permissible limits of reasonableness in forcing appellant into the WOKO mold by relying on isolated errors of judgment during the first few hectic months of KRLA's operation and upon innocent statements which were fully consistent with appellant's obligations as a licensee.

III. The Commission's Finding that Donald Cooke was Irresponsible and Neglected the Station's Operation is Unsupported by Substantial Evidence on the Record Considered as a Whole.

Although it acknowledged that "even in the best-managed operation isolated instances of such practices [as misleading clues in promotional contests and alteration of logs] could occur," the Commission tried to justify what appears to be an *a priori* conclusion that KRLA was not a well-managed operation on the ground that the occurrence of these instances made it "inescapable that responsible management was not characteristic of Eleven Ten's operation of station KRLA." This is the type of circular reasoning which pervades and invalidates the Commission's decision.

It might well be true that if Don had not returned to New York on August 21 these events would not have occurred. On the other

hand, they might well have occurred even if he had been present at the studio every single day. No owner can be expected to be conversant with every detail of a station's operation. In approving the transfer to appellant, the Commission knew that Don would continue to reside in New York and that he intended to rely upon employees for day-to-day management (R. 925). He carefully chose a supervisory staff whose reputation in the industry as seasoned broadcasters would have led any employer reasonably to believe that he could safely delegate responsibility to them to formulate programming details and to keep logs properly.³⁹ As stated in a recent Commission decision ". . . it is not unknown for inexperienced or absentee owners, particularly corporate entities primarily engaged in other endeavors, to hire competent managers and under only the broadest overall supervisory standards leave all facets of station operation under the control of such managers."⁴⁰

Under Don's instructions and supervision, appellant solved a series of difficult problems in the first four months, including the completion of the new 50 kilowatt facilities, the hiring of a new staff, and the establishment of a new program format. The record is clear that Don, whether in Los Angeles or New York, maintained continuous contact with the station's staff and laid down guidelines for the general manager, the program director, station accountant and other members of the staff in the performance of their duties.⁴¹ Can it reasonably be concluded, on consideration of the whole record, that evidence of Don's interest in

³⁹ It is normally the program director's function to see that programming logs are properly maintained in accordance with the Commission's rules.(Tr. 1193).

⁴⁰ Wireline Radio, Inc., 32 FCC 1129, 1148 (Initial decision adopted by Commission December 22, 1961), citing Radio and Television Broadcasting Co. of Idaho, 6 RR 629 (1950) and E. A. Mahoney, 5 RR 702(c) (1949).

⁴¹ Appellant's exhibits 8, 16-20 (R. 399, 440). It should be noted also that the Commission granted Exception 40 to the extent of expanding footnote 11 of the Initial Decision to include the factual recitations contained in Appendix A attached to appellant's exceptions (R. 1256).

the station's activities was nullified by the fact that he was unaware of the clues which were broadcast in two promotional contests (extending together over a maximum period of seven days) and of the act of his manager in altering the logs?

In turning its face away from the good side of Don's and KRLA's record of accomplishment, the Commission ignored the admonition of the Supreme Court in *Universal Camera* that "the substantiality of evidence must take into account whatever in the record fairly detracts from its weight."⁴² Here the Commission gave no consideration whatever to the fact that the Examiner who had an opportunity to appraise Don's demeanor as a witness, refused to hold that Don's testimony was untrustworthy even though the Broadcast Bureau had proposed, and strongly urged, such a finding. Instead, the Commission sought to buttress the shaky foundation for its findings of irresponsibility and neglect by unsupported assertion that "so far as Donald Cooke is concerned, it is purely fortuitous that there were not many more instances of the deception." In this instance, as in others throughout the case, the Commission was disposed to rely upon conjecture as a substitute for evidence.

IV. In Rejecting, as of no Decisional Value, Evidence That KRLA's Programming Was Meritorious and Served the Needs of the Community, the Commission Failed to Consider an Essential Facet of Public Interest, Convenience and Necessity.

Inconsistently with its expressed views in this case that the "ultimate question was whether a renewal . . . would be in the public interest," the Commission refused to take account of evidence in the record which showed that the programming of KRLA was meritorious and responsive to the needs and desires of the community. Thus, even by its own conception of the scope of the proceeding, the Commission avoided its duty to determine on an

⁴² *Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 488 (1951).

overall basis whether a renewal of KRLA's license would be in the public interest.

As the Examiner noted, "Twelve public witnesses testified . . . to the excellent service provided their organizations by KRLA."⁴³ Appellant requested the Commission to make findings with respect to the testimony of these witnesses and of the programming of KRLA.⁴⁴ The Commission denied the exception on the ground that "meritorious programming efforts by KRLA after the Commission had made clear to the licensee that renewal of its license was in doubt . . . do not constitute a reliable measure of Eleven Ten as a licensee."⁴⁵ (R. 1551.) This ruling misses the point. We submit that appellant's reliability as a licensee must be put on the public interest scales, to be weighed against the losses in service which would immediately ensue from putting KRLA off the air; otherwise the Commission can not be said to have fully discharged its responsibilities.⁴⁶

We do not believe that the facts of this case can be held to have dictated *per se* that the station must be removed from the air and, therefore, that all countervailing public interest con-

⁴³ I.D. Paragraph 87 (R.954).

⁴⁴ This exception, No. 119, refers in detail to the programming set forth in Appendix B to the Exceptions (R. 1024, 1034).

⁴⁵ The Commission erred factually, since many of the programs referred to in Exception 119 were initiated prior to the Commission inquiry of December 16, 1959 (R. 1034). Moreover, as pointed out under Point V of our Argument, there is a lingering doubt as to the real basis for the denial of Exception 119. The Official report of the FCC's decision on reconsideration stated that the Commission affirms its ruling denying Exception 119 on the ground of specificity, "since the requested findings are set forth in such exhausting detail as to be imprecise." (33 FCC at 97).

⁴⁶ In *Greater Kampeska Radio Corp. v. F.C.C.*, 71 App. D.C. 117, 119, 108 F.2d 5, 7 (1939), the Commission's refusal to renew a license was upheld on the merits but the Court pointed out that the need of broadcast services, etc., "are no doubt important considerations to be weighed by the Commission in making its determination." See also, *Michigan Consolidated Gas Co. v. Federal Power Commission*, 108 U.S. App. D.C. 409, 283 F.2d 204 (1960); *Democrat Printing Co. v. F.C.C.*, 91 U.S.App D.C. 72, 75, 202 F.2d 298, 301 (1952).

siderations must be ignored.⁴⁷

We are not saying that the excellence of KRLA's program service or the need of the community for programs not carried out by other stations, as shown in the record, serves to reduce derelictions to matters of no consequence. But an administrative agency cannot discharge its responsibility to determine whether renewal *vel non* of a station license is in the public interest without consideration of the effect which putting the station off the air would have upon the listening audience which depends upon that station for certain broadcasts and upon educational institutions, churches, etc., which use the station's facilities to carry their programs. We assume this point will be covered more fully in the brief of appellants (two churches) in No. 17,239, which is consolidated herewith. Moreover, the Commission, if it had considered these countervailing factors, might well have concluded that an alternative sanction might have served the public interest better than denying a renewal. The Commission has on occasion ordered monetary forfeitures for violations. For example, on December 12, 1962, it directed the licensee of stations WDOV AM-FM, Dover, Delaware, to forfeit \$5,000 for wilful and repeated violations in broadcasting commercial programs and commercial announcements during Hurricane Esther "emergency" operations on September 19, 1961, submitting false program logs and false information concerning the same to mislead the Commission, and engaging in the practice of "double billing" certain

⁴⁷ The Commission might have concluded that, with the meritorious programming and the needs of the public for KRLA's services on one side of the scale, a monetary forfeiture by KRLA would represent a more suitable punishment, consistent with the public interest, than loss of license. The Commission has stated, "We intend to use the forfeiture proceeding, as we believe it was intended to be used, to impel broadcast licensees to become familiar with the terms of their licenses and the applicable rules, and to adopt procedures, including periodic review of operations, which will result that stations will be operated in substantial compliance with their licenses and the Commission's Rules." In the Matter of Liability of Crowell-Collier Broadcast Corp., Licensee of Station KDWB (FCC 61-989, 7/26/61). See also, In the Matter of Liability of Star Broadcasting, Inc., Licensee of Station KISN, Vancouver, Washington for Forfeiture, (FCC 63-63, 1/23/62).

local merchants to deceive national advertisers. (Public Notice - B, Report No. 2380, released December 13, 1962.)

The weighing of competing public interest factors is, of course, a matter for the Commission, but weigh it must, on the basis of the evidence. At one point, the Commission indicated its cognizance of this responsibility. In its order denying the petitions filed by the two churches which used KRLA's facilities, the Commission stated that "The religious programming offered by station KRLA does not outweigh the considerations underlying the conclusions in the decision . . ." How could the Commission rationally have concluded that programming did not "outweigh" other considerations when it denied Exception 119 and hence avoided the weighing process?⁴⁸

A case may arise in which the Commission can reasonably find that the misconduct of a licensee is so grave that under no conceivable circumstances could the public interest be served by continuing the station on the air — no matter how pressing the need for the programming of that station. In that case, perhaps, the Commission could conclusively presume that programming is entitled to no weight at all. But when, as here, the condemned incidents are relatively trivial, such a conclusive presumption would not apply. Moreover, we submit that, even as a measure of appellant's reliability to operate in accordance with the Commission's rules, KRLA's actual operations over the entire period before the record was closed had more probative value than evidence of several isolated incidents during the first few months of operation.⁴⁹

⁴⁸ The Commission's reference to its favorable ruling on Exception 104 does not change the situation. Exception 104 referred to efforts made by KRLA to arrange for various religious programs. Only one program, "Spirit of Today" and a number of public service spot announcements were referred to in Exception 104 as having been broadcast. Only in Exception 119 (and in Appendix B attached thereto) was the full range of KRLA's programming set forth.

⁴⁹ The Commission has stated that it does not expect program proposals to be fully effectuated immediately following licensing. See, e.g., *Blackwater Broadcasters*, 13 RR 32(d)(1956).

V. The Commission's Basic Findings Were so Dispersed Among the Parts of the Initial Decision Which it Adopted, the Exceptions to the Initial Decision Which it Granted, and the Final Decision Which it Issued as to Have Precluded an Intelligent Use of Basic Findings by the Commission in Reaching its Ultimate Findings.

In its Final Decision, the Commission stated that it had adopted the findings in the Initial Decision "except as indicated herein and in our rulings on the exceptions." In an Appendix to the Final Decision, it granted some 78 exceptions to those findings. Many of the exceptions which were granted were several pages in length. Of the 78, some were granted in full, others in part, still others "in substance" and several "as reflected in" or "to the extent reflected in" the decision. We submit that, in view of the extensive changes thus made in the basic findings, a proper concern for clarity and a due regard for its obligation to facilitate judicial review⁵⁰ required the Commission to rewrite its decision so as to collect in one place its basic findings of fact before reaching its ultimate findings and conclusions. Scattered as the basic findings are, a serious doubt exists as to whether, realistically, the Commission can be said to have been fully aware of them when they made the critical inferences and conclusions upon which the decision was bottomed.

As stated by this Court in *Robey v. Schwab*,⁵¹ an administrative agency "must assume the responsibility of expressing the basic facts on which it relied with sufficient specificity to convey to the parties, as well as to the court, an adequate statement of the facts which persuaded [the agency] to arrive at its decision." The Court added a footnote which is particularly pertinent to the instant case, to wit: "In connection with this requirement, it is

⁵⁰ The Court should "not have to comb the record, as we have done here, to attempt to learn the basic facts." *WLOX Broadcasting Co. v. F.C.C.*, 104 U.S. App. D.C. 194, 200, 260 F.2d 712, 718 (1958).

⁵¹ ___ U.S. App. D.C. ___, 307 F.2d 198, 202 (1962).

not inappropriate to recall Judge Frank's observation . . .:

'Often a strong impression that, on the basis of the evidence, the facts are thus — and so — gives way when it comes to expressing that impression on paper'." ⁵²

In an appendix to the Commission's decision, each exception is listed by number with notations indicating whether, and to what extent, it has been granted and, if not, why it was denied. As a disposition of exceptions, this was proper. ⁵³ But when, as here, basic findings are changed substantially by exceptions which are granted, the mere indication of the favorable rulings in an appendix is to "keep the word of promise to our ear and break it to our hope." Was the Commission able in this fashion to take proper account of, and in context evaluate, the new findings which were generated by its favorable rulings on exceptions? ⁵⁴

The hollowness of appellant's success in obtaining favorable rulings on its exceptions can perhaps be best illustrated by the

⁵² United States v. Forness, 125 F.2d 928, 942 (2d Cir. 1942), cert. denied sub nom. City of Salamanca v. United States, 316 U.S. 694 (1942). A similar thought was expressed by Professor Davis: "[O]ne who is confronted with a complex case can often gain a good deal by informing himself through the process of analyzing in writing what he understands only imperfectly, therefore developing his understanding a bit further." 2 Davis, Administrative Law Treatise, pp. 447, 448 (1958).

⁵³ Radio Station KFJH Co. v. F.C.C., 101 U.S. App. D.C. 164, 247 F.2d 570 (1957).

⁵⁴ Our doubts as to whether the Commission fully comprehended the underlying facts are compounded by noticing that its decision of July 18, 1962, as certified to this Court by the Commission's Secretary (R.1545), differs in several respects from the version which appears in the Official Report issued by the United States Government Printing Office, ostensibly as "Reported by the Commission" (33 FCC 92). We assume that an attempt to explain the discrepancies (particularly paragraph 14 of the two versions) will be made on the basis that the report sent to the Superintendent of Documents was subsequently changed. But which version was actually considered and acted upon by the Commission?

Moreover, at page 46 of its Annual Report to Congress, the reasons asserted by the Commission for denying a renewal of license to KRLA ("Primarily for programming considerations") are different from those stated in its decision. 1962 Report to Congress, submitted pursuant to Section 4(k) of the Communications Act of 1934, as amended.

Commission's ruling on Exception 40. The Initial Decision contained a mere footnote reference that "There was considerable record evidence of written reports and instructions between Don, Schulz and other employees." In Exception 40, appellant urged that this finding was inadequate and that detailed findings concerning the supervision which Don exercised over KRLA's affairs should be made in a manner comparable to the findings made on other matters in the proceeding. As the Commission was advised, there were several hundred pages of evidence in the record on this point.⁵⁵

The Commission disposed of the exception by granting it in part, denying it in part, and stating that the findings are completed with "the factual recitations contained in Appendix A." Attention was then invited to a ruling on a group of other exceptions. Turning to the latter ruling, one finds that the Commission stated that it was making additional requested findings which "indicate the extent to which Donald Cooke participated in and maintained contact with station operation and management, and that they are recognized collectively in Par. 7 of the Decision." This, we respectfully submit, was a farce. An examination of paragraph 7 will show that the only recognition by the Commission of Don's contacts with the staff was the glancing introductory allusion to the fact that "... by correspondence and telephone Donald Cooke maintained contact with station operation and management . . ." In short, the extensive findings which the Commission purported to make with respect to Don's participation in KRLA's operations were emasculated by failing to bring them into the decision.

In its petition for reconsideration, appellant asserted that the findings as modified by the rulings on exceptions did not support the conclusions. It attempted to reconstruct the decision in

⁵⁵ Appendix A attached to the exceptions contained detailed findings as to the communications between Don and his staff (R. 1029).

a single document designed to incorporate the results of the rulings on the exceptions. In denying reconsideration, the Commission noted merely that the document had been submitted but did not indicate whether or not it agreed with the translation of its rulings. We urge the Court to examine this document, particularly Footnote 11 on pages 10-12 (R. 1345), /since we think it will serve to underscore how empty were the Commission's rulings on exceptions in the absence of an attempt on its part to make a similar reconstruction of the Initial Decision.

We are not contending that the Commission had to set forth every bit of evidence or fact which had some bearing on the questions before it, or that any particular form of presentation of its findings is sacrosanct. Our concern is with the lack of clarity in the circumstances of this case and our belief that the Commission's basic findings were so fragmented as not to be fully comprehended by the Commission. Particularly when inferences of subjective intent and motive are drawn by the Commission, fragmentation of this magnitude precludes a rational decision. The Court cannot be confident that the decision below was, as required in the *Saginaw* case,⁵⁶ "based upon that careful consideration of the evidence which is properly to be expected from an unbiased body of experts discharging a function so important from the standpoint of both the parties and the public."

⁵⁶ *Saginaw Broadcasting Co. v. Federal Communications Commission*, 68 U.S. App. D.C. 282, 291-292, 96 F.2d 554, 563-564 (1938), cert. denied, sub nom. *Gross et al. v. Saginaw Broadcasting Co.*, 305 U.S. 613 (1938).

CONCLUSION

For all the foregoing reasons, the decision and orders of the Commission should be set aside and the case remanded to the Commission, with directions to grant the petition for rehearing or to afford such other relief as the Court may direct.

Respectfully submitted,

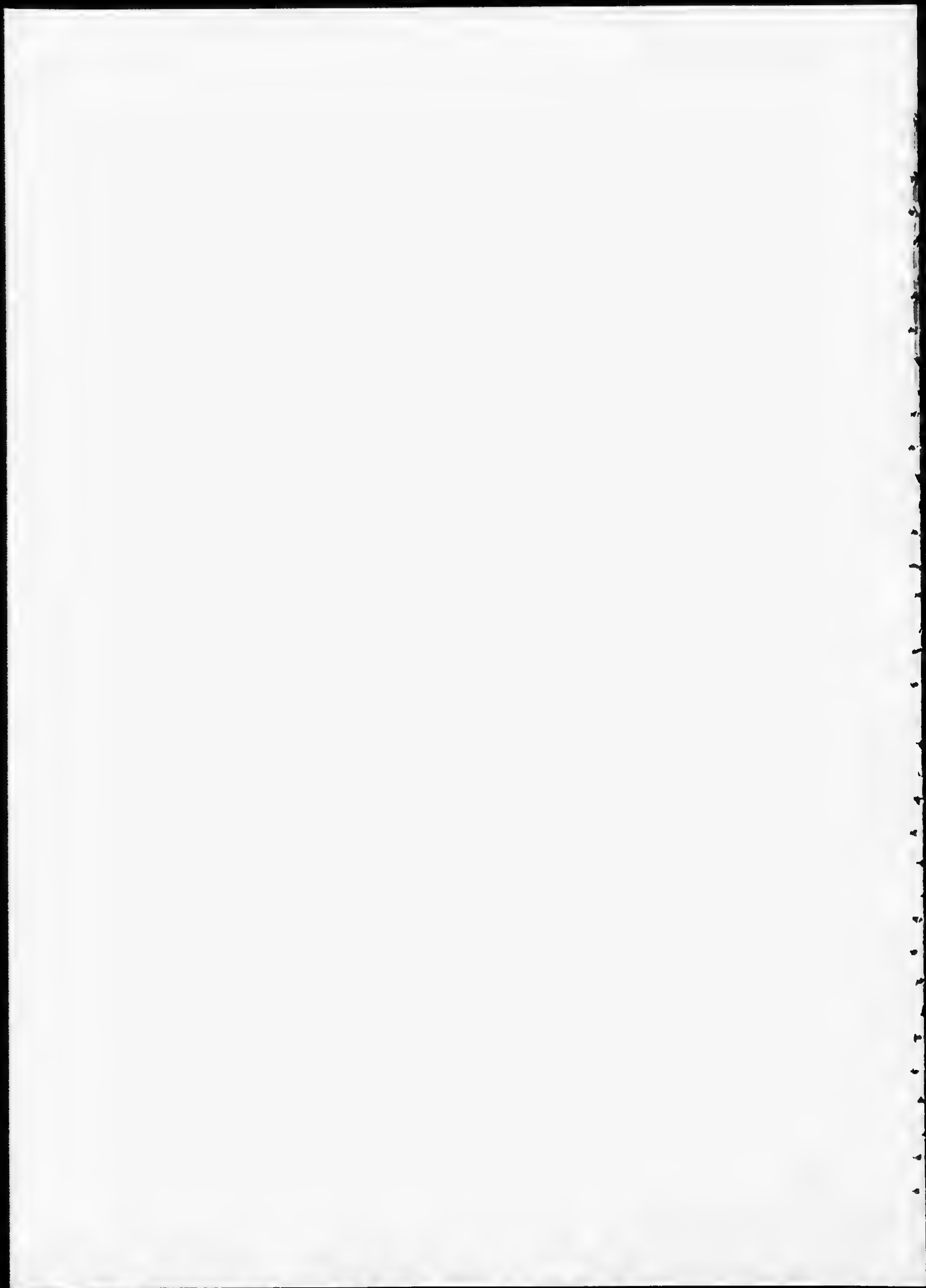
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February 4, 1963



APPENDIX A

The following are the pertinent constitutional, statutory and regulatory provisions involved:

1. The Constitution of the United States.

Amendment V.

"No person shall . . . be deprived of life, liberty, or property, without due process of law. . . ."

2. Communications Act of 1934, as amended.

Section 309, 48 Stat. 1085 (1934) as amended by Communications Act Amendments, Stat. (1952) (in effect at all times pertinent to this case):

"(a). If upon examination of any application provided for in section 308 the Commission shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application.

"(b) If upon examination of any such application the Commission is unable to make the finding specified in subsection (a), it shall forthwith notify the applicant and other known parties in interest of the grounds and reasons for its inability to make such finding. Such notice, which shall precede formal designation for a hearing, shall advise the applicant and all other known parties in interest of all objections made to the application as well as the source and nature of such objections. Following such notice, the applicant shall be given an opportunity to reply. If the Commission, after considering such reply, shall be unable to make the finding specified in subsection (a), it shall formally designate the application for hearing on the grounds or reasons then obtaining and shall notify the applicant and all other known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally. The parties in interest, if any, who are not notified by

the Commission of its action with respect to a particular application may acquire the status of a party to the proceeding thereon by filing a petition for intervention showing the basis for their interest at any time not less than ten days prior to the date of the hearing. Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate but in which both the burden of proceeding with the introduction of evidence upon any issue specified by the Commission, as well as the burden of proof upon all such issues, shall be upon the applicant."

3. Sections 7, 8 and 10 of the Administrative Procedure Act.

60 Stat. 237 *et seq.*, 5 U.S.C. 1006, 1007, 1009:

Sec. 7. Hearings; . . . evidence.

(c)" . . . Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative and substantial evidence . . ."

Sec. 8. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record.

* * *

(b)" . . . All decisions (including initial, recommended, or tentative decisions) shall become part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof . . ."

Sec. 10 Judicial review of agency action.

* * *

(e)"So far as necessary to decision and where presented the reviewing court shall decide all relevant questions

of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege or immunity; (3) in excess of statutory jurisdiction, authority or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error."

4. Rules and Regulations of the Federal Communications Commission, 47 C.F.R.:

Sec. 1.140 Procedure when an application is designated for hearing.

"(a) When an application has been designated for hearing, the Secretary of the Commission will mail an order to the applicant setting forth the reasons for the Commission's action and the issues upon which the application will be heard. In addition, the notice of hearing will be published in the Federal Register. The Commission will, when possible, give at least 60 days advance notice on comparative hearings.

"(b) Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate but in which both the burden of proceeding with the introduction of evidence upon any issue specified by the Commission, as well as the burden of proof upon

all such issues, shall be upon the applicant except as otherwise provided in the order of designation."

Sec. 1.141 Motions to enlarge, change, or delete issues.

"(a) A motion to enlarge, change or delete the issues may be filed by any party to a hearing.

"(b) Such motions must be filed with the Commission not later than 15 days after the issues in the hearing have first been published in the Federal Register. Any person desiring to file a motion to enlarge, change, or delete the issues after the expiration of such 15 days must set forth the reason why it was not possible to file the petition within the prescribed 15 days. Unless good cause is shown for delay in filing, the motion will not be granted.

"(c) Such motions, oppositions thereto, and replies to oppositions shall contain specific allegations of fact sufficient to support the action requested. Such allegations of fact, except for those of which official notice may be taken, shall be supported by affidavits of a person or persons having personal knowledge thereof."

Sec. 1.157 Final decision of the Commission.

"(a) After opportunity has been afforded for the filing of proposed findings of fact and conclusions, exceptions, supporting statements, briefs, and for the holding of oral argument as provided in this subpart, the Commission will issue a final decision in each case in which an initial decision has not become final.

"(b) The final decision shall contain:

- (1) Findings of fact and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record;
- (2) Ruling on each relevant and material exception filed; and
- (3) The appropriate rule or order and the sanction, relief or denial thereof."

APPENDIX B

The following is the complete memorandum of October 2, 1959 from Donald Cooke to KRLA personnel:

"OFFICE MEMO

Date: October 2nd, 1959

"To Herb Heiman
From D. R. Cooke
Copy to Ed Schulz

"When I made up the program schedule which was submitted to the FCC and approved by them, I included a farm report on each newscast. I regret now that I did so. However, Pierson, Ball and Dowd urged that KRLA increase its amount of agricultural programming. Thus, the reason for the inclusion of the farm report.

"Naturally, we don't want the usual "hay seed" type of report inserted in our newscasts. However, surely there are means of getting around the strictly rural or "hay seed" type of information.

"For instance, could we broadcast the prices of:

Avocadoes
Oranges
Lemons

"This information can be obtained from the Sunkist Fruit Exchange in Los Angeles. I believe they issue a daily citrus report.

"You can also obtain, locally:

Wheat prices
Corn Prices
Barley prices

as quoted on the Chicago Grain Market.

"Available also, I am given to understand, are the prices on cattle, as quoted on the Oklahoma and Los Angeles Cattle Markets.

"Ed Schulz has an idea that the farm market reports can be

incorporated in our schedule in the form of "tips to housewives." I don't see how this would help KRLA conform to its proposed broadcast schedule. I think that a 30 second farm market report on certain specific newscasts (certainly not on the 24 newscasts a day) would fill the bill.

"Herb, please give your serious attention to this. I am not anxious to run afoul of the FCC.

"By now, you have undoubtedly received a copy of the program schedule which we submitted to the FCC. You will note that KRLA intends to:

- 1) Set up a series of religious programs
and
- 2) Set up a series of public service talks in the late evening

"Treating first with No. 2, perhaps the use of a public service announcement in a quarter hour, say from 10:30 - 10:45 PM nightly, will satisfy the FCC.

"Ed Schulz tells me that a public service announcement in this period without any commercial announcements being included in the period designates the entire 15 minutes as public service. If this is so, are both of you fellows satisfied that we should not have to put a 15 minute talk in? I understand that the Smog Research Division of UCLA is prepared to give us material for one minute spot announcements which could be used in such a period and which would result in the 15 minute period being classified as public service. As I recall it, Dr. Hagen Smith is the professor or researcher in charge of the smog program and Mr. Jim Miller is the public relations counselor for that part of the university.

"As to the series of religious programs, nothing would please me more than to remove the necessity of broadcasting a round table of churches in the 11:00 A.M. to 12:00 noon period Sundays. If both of you fellows feel that we should have a religious program on the air and, whether we want a religious program on the air or not, that we must broadcast one in order to conform with our promise to the FCC, why not put it on between 6:00 and 7:00 A.M. Sunday mornings? Would this pass muster? You will also note that KRLA has undertaken to broadcast a 30 second or 60 second message of religious good cheer each morning at 5:59 A.M. My thought originally was to invite each clergyman in the Los Angeles

area to prepare a 30 or 45 second inspirational message. If we had a back log of 50-100 inspirational messages, they would not wear out their welcome too soon.

"I am anxious to get your reaction to this memo.

Yours very truly,

DC:dmc

/s/ Don"

BRIEF FOR APPELLEE

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,239

IMMACULATE CONCEPTION CHURCH OF LOS ANGELES
AND LAKE CONGREGATIONAL CHURCH OF PASADENA,
Appellants.

v.

FEDERAL COMMUNICATIONS COMMISSION,
Respondent.

No. 17,240

ELEVEN TEN BROADCASTING CORPORATION,
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee

ON APPEALS FROM DECISIONS AND ORDERS
OF THE FEDERAL COMMUNICATIONS COMMISSION

MAX D. PAGLIN,
General Counsel,

DANIEL R. OHLBAUM,
Associate General Counsel,

RUTH V. REEL,
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ERNEST O. EISENBERG,
Counsel.

United States Court of Appeals
for the District of Columbia Circuit

FILED APR 1 1963

Nathan J. Paulson
CLERK

Federal Communications Commission
Washington 25, D.C.



STATEMENT OF QUESTIONS PRESENTED

In accordance with the order of this Court dated December 7, 1962, the Federal Communications Commission specified the following issues in Case No. 17,239:

1. Was the Commission, in its order of July 24, 1962, denying the petitions of appellants for reconsideration and for oral argument, correct in its determination that it had already given adequate consideration to the religious programming offered by Station KRLA, and that oral argument and reconsideration on this point was unnecessary?

2. Was the Commission, in its order of July 24, 1962, correct in its determination that the religious programming offered by Station KRLA did not outweigh the considerations underlying the Commission's decision to deny the application of the Eleven Ten Broadcasting Corporation for the renewal of the license of Station KRLA?

3. Did the Commission, in its order of July 24, 1962, fail to make proper findings of fact and conclusions of law as required by the Communications Act of 1934, as amended, and Sections 7 and 8 of the Administrative Procedure Act, on all of the material issues?

In Case No. 17,240 the parties have stipulated that the following issues are presented:

1. Whether the Commission's findings can be ascertained only by reference to the Initial Decision,

the Exceptions, the Final Decision, and Rulings on the Exceptions, and, if so, whether the findings are in such form and so unclear and imprecise as (a) not to constitute findings made by the Commission, and (b) to preclude proper judicial review of the Decision.

2. Whether the Commission decided issues adversely to Appellant without affording the latter proper and adequate notice and opportunity to be heard on those issues and, if so, whether Appellant was denied a fair hearing in accordance with constitutional and statutory requirements.

3. Whether the Commission's Decision denying a renewal of Appellant's license to operate station KRLA is arbitrary and erroneous in that (a) its findings are unsupported by substantial evidence in the record considered as a whole, and (b) its conclusions do not flow logically from the findings.

4. Whether, in denying renewal of Appellant's license to operate station KRLA, the Commission failed to consider or make findings and conclusions with respect to substantial evidence (either in the record or improperly rejected when proffered) which is relevant and material to the discharge of the Commission's responsibility to determine whether the public interest, convenience or necessity would be served by continued operation of KRLA - including,

particularly, evidence designed to show that KRLA presented meritorious programming and that it rendered a needed and desired service to its community; and, if so, whether the Commission thereby failed to comply with the requirements of the Communications Act of 1934, as amended, and Sections 7 and 8 of the Administrative Procedure Act.

5. Whether the Commission's conclusion that Appellant's president was guilty of efforts to deceive the Commission is unsupported by the record and is arbitrary and capricious, and, if so, whether in making that conclusion a principal basis for its decision to deny renewal of Appellant's license to operate KRLA, the Commission committed reversible error.

6. Whether the Commission's action in denying renewal of Appellant's license in the particular circumstances presented in this case was drastic and represented a significant decisional departure from policies and decisions of the Commission in similar cases, and, if so, whether the extent thereof could and did render it arbitrary and capricious; discriminatory against Appellant; a denial of due process to Appellant; and tantamount to a revocation of license without affording Appellant the procedural safeguards provided in the Communications Act of 1934, as amended, and the Administrative Procedure Act.

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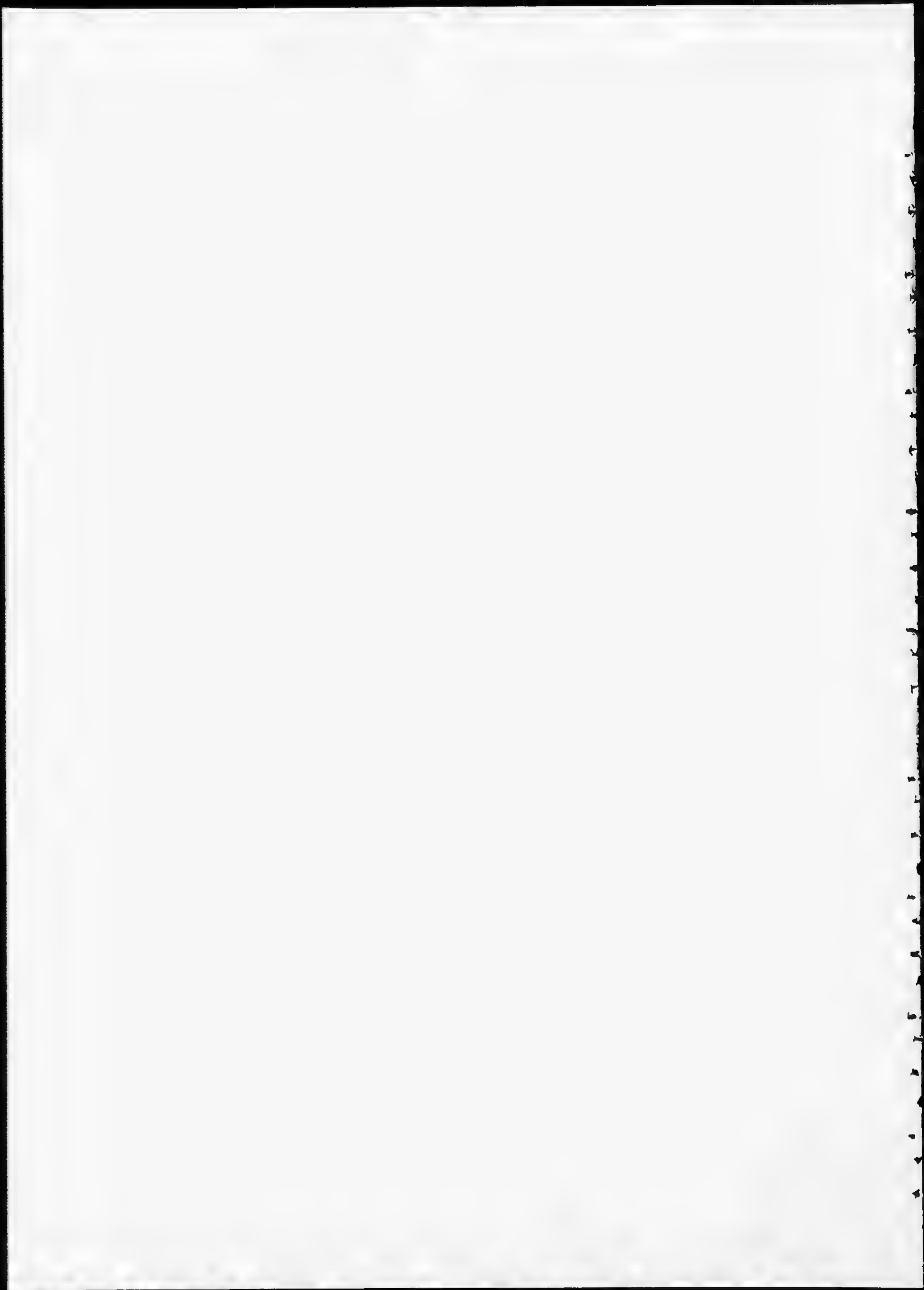
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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,239

IMMACULATE CONCEPTION CHURCH OF LOS ANGELES
AND LAKE CONGREGATIONAL CHURCH OF PASADENA,
Appellants,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Respondent.

No. 17,240

ELEVEN TEN BROADCASTING CORPORATION,
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee.

ON APPEALS FROM DECISIONS AND ORDERS
OF THE FEDERAL COMMUNICATIONS COMMISSION

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appellants in these consolidated cases have written separate and somewhat incomplete statements emphasizing different aspects of the Commission's actions here under review. It is believed that a full counterstatement of the entire proceedings would be of assistance to the Court.

These consolidated cases involve appeals by the Immaculate Conception Church of Los Angeles, California, and the Lake

Congregational Church of Pasadena, California (The Churches), in Case No. 17,239,¹ and by the Eleven Ten Broadcasting Corporation of Pasadena, California (Eleven Ten or KRLA), in Case No. 17,240, from a decision of the Federal Communications Commission released March 19, 1962 (R. 1244-1263), and from a Memorandum Opinion and Order of the Commission released July 24, 1962 (R. 1545-1551), denying Eleven Ten's applications for renewal of the license for standard broadcast station KRLA at Pasadena, California, and for the license to cover its construction permit authorizing 50 kw power. The Churches also appeal from the Order of the Commission released July 24, 1962 (R. 1552-1553), denying the petitions of the Churches for reconsideration of the Commission's decision of March 19, 1962, and for oral argument.

The Churches have invoked the jurisdiction of this Court under Section 402(b)(6) and 402(c) of the Communications Act of 1934, as amended, 47 U.S.C. 402(b)(6) and 402(c), 66 Stat. 718, and under Sections 7, 8 and 10 of the Administrative Procedure Act, 5 U.S.C. 1006, 1007 and 1009, 60 Stat. 237. Eleven Ten has filed its appeal under Section 402(b) of the Communications Act of 1934, as amended, 47 U.S.C. 402(b), and under Section 10 of the Administrative Procedure Act, 5 U.S.C. 1009. The pertinent facts are as follows:

A. Background

On December 22, 1958, Eleven Ten Broadcasting Corporation (Eleven Ten) and Pacific Coast Broadcasting Company

applied for Commission consent to the assignment of the license for standard broadcast station KRLA (formerly known as station KXLA)^{1/} on 1110 kc at Pasadena, California, from Pacific Coast to Eleven Ten (R. 1855-1990). In support of the assignment application, Eleven Ten, which is wholly owned by Donald R. Cooke, represented to the Commission that although the programming of KRLA would emphasize popular music and news (R. 1933), it would also broadcast religious, agricultural and educational programs and devote the following percentages of the station's time to these categories (R. 1868):

Religious	2.1%
Agricultural	1.0%
Educational	1.9%

On March 25, 1959, the Commission granted its consent to the assignment of the license of KRLA to Eleven Ten (R. 2013).

On September 2, 1959, Eleven Ten filed an application for renewal of its license for KRLA (R. 1-54). Since the analysis of past programming submitted with this application covered only the period when the station was operated by Pacific Coast, the Commission by letter dated October 28, 1959 directed Eleven Ten to submit a revised program analysis for the period October 18-24, 1959, inclusive, and program logs for each date (R. 71-72, 943). On November 12, 1959, Eleven Ten filed an amended application incorporating its program analysis and logs for the week of October 18-24, and representing to the

^{1/} Since the call letters of KXLA were changed to KRLA on August 31, 1959, (R. 2022), we shall refer to the station as KRLA throughout this brief.

Commission that the percentage of broadcast time devoted to the following categories during this period was (R. 79, 943):

Religious	0.16%
Agricultural	0.69%
Educational	0.00%

On December 16, 1959, the Commission wrote Eleven Ten pursuant to former Section 309(b) of the Act, 47 U.S.C. (1958 ed.) 309(b), that it was unable to find that a grant of the renewal application would serve the public interest, convenience or necessity (R. 189-191).^{2/} The Commission stated that it appeared that Eleven Ten was not operating KRLA in accordance with the programming proposals made by it in the assignment application; that KRLA's program logs for the week of October 18 to 24, 1959, might have been falsified to include religious programs which had never been broadcast; that a contest conducted on KRLA called "Find Perry Allen" might have constituted an improper use of facilities contrary to the public interest; that Eleven Ten's proposal for the broadcast of spot announcements appeared to be excessive; and that a question had arisen as to whether KRLA was under the control of a Canadian citizen, Jack K. Cooke, in violation of Section 310 of the Communications Act (R. 189-191).

^{2/} This letter is termed and will be referred to in this brief as a "Section 309(b) letter" because it was written to Eleven Ten pursuant to former Section 309(b) of the Communications Act of 1934, as amended, 47 U.S.C. (1958 ed.) 309(b), to afford Eleven Ten the opportunity to inform the Commission of any reason why its application should not be designated for hearing. The comparable section of the Act as amended by the Communications Act Amendments, 1960, 74 Stat. 889, is Section 309(e).

The Commission afforded Eleven Ten until January 14, 1960, to show why its application should not be designated for hearing (R. 190). On January 13, 1960, Eleven Ten requested an extension of time within which to respond until February 15, 1960, which the Commission granted (R. 192-193, 194). On February 15, 1960, Eleven Ten submitted an eight-page letter signed by Donald R. Cooke (R. 196-203), replying in detail to the Commission's statements, together with affidavits signed by Eleven Ten's employees (R. 204-210, 229-232), copies of correspondence between Donald R. Cooke and his employees (R. 211-228, 233-236), and an amendment to Eleven Ten's application for renewal of KRLA's license (R. 237-240). In support of this last amendment, Eleven Ten filed exhibits showing KRLA's current and proposed programming in the fields of religion, education, discussion, and agriculture, and letters from clergymen expressing appreciation for religious programming (R. 241-352).

On July 5, 1960, the Commission designated the renewal application of Eleven Ten for hearing upon the following issues (R. 353-354):

1. To determine whether, in light of its operations since it acquired Station KRLA, the licensee's program proposals contained in its application for Commission consent to assignment of the license of Station KRLA (then KXLA) (BAPL-171) were made in good faith;

2. To determine whether, in the light of the manner in which the "Find Perry Allen" contest was conducted by Station KRLA in and about September 1959, the licensee operated said station for improper purposes contrary to the public interest;

3. To determine whether the station's program logs for the week of October 18-24, 1959 were altered with the intent and purpose of deceiving the Commission;

4. To determine whether, since the date of assignment of license of Station KRLA (formerly KXLA) to the licensee, Jack K. Cooke, a Canadian citizen, has exercised control with respect to the operations of said station contrary to the provisions of Section 310 of the Communications Act of 1934, as amended, and the Commission's rules and policies promulgated thereunder;

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether a grant of the above-entitled applications would serve the public interest, convenience or necessity.

Hearings were held at Los Angeles, California, from October 31, 1960 through November 9, 1960 (Tr. 24-1299),^{3/} and at Washington, D. C. on December 22, 1960 (Tr. 1300-1319). Testimony was received from Donald R. Cooke and his brother, Jack K. Cooke (Tr. 388-915, 1301-1305), from employees and former employees of Eleven Ten, and from representatives of various public service and religious organizations in the Los Angeles area, including among others, Monseigneur Julius J. Truxaw, Pastor of the Immaculate Conception Church of Los Angeles (Tr. 81-91), and Reverend Raymond C. Orlund, Pastor of the Lake Congregational Church of Pasadena (Tr. 173-183). After the record in the proceeding was closed, proposed findings of fact and conclusions of law were filed by Eleven Ten (R. 742-832), and by the Commission's Broadcast Bureau (R. 833-907).

^{3/} The "Tr." prefix to a record reference is to the original pagination of the hearing transcript in the record before the Commission which has been filed with the Court. These transcript pages have not been renumbered in the record.

B. The Examiners' Initial Decision

On April 21, 1961, the Hearing Examiners^{4/} issued an initial decision, finding that Eleven Ten and its employees had engaged in improper conduct but concluding that the license should be renewed for a one-year term (R. 921-969). The pertinent findings and conclusions made by the examiners may be summarized as follows:

1. The conduct found by the examiners

The examiners' findings as to relevant conduct by Eleven Ten revolve around five matters: (a) two contests which were conducted on KRLA in a "shabby and irregular fashion", (b) falsification of program logs to reflect religious programming which had not been broadcast and with intent to deceive the Commission, (c) a memorandum dated October 2, 1959 from Donald Cooke to KRLA employees and the employees' response, (d) misrepresentations in Eleven Ten's response to the Commission's 309(b) letter and in the February 13, 1960 amendment to its renewal application, and (e) a letter dated April 12, 1960 from Donald Cooke to the KRLA program director indicating that KRLA intended to drop certain religious and educational programs once its license was renewed. The findings and supporting evidence as to each of these matters are set forth under

^{4/} Chief Hearing Examiner James D. Cunningham who presided at the hearings was joined by Hearing Examiner Herbert Sharfman in the preparation of the initial decision. Counsel for Eleven Ten and for the Broadcast Bureau agreed at the prehearing conference of October 28, 1960, for the association of the presiding Hearing Examiner with another Hearing Examiner of the Commission in the preparation of the decision (Tr. 55-56, R. 922).

5/
separate headings below.

(a.) The Contests

Background To The Contests

Eleven Ten assumed operation of KRLA on May 1, 1959 (R. 927; R. 2016), and for the next two months continued the programming format of the previous ownership, with country and western music (R. 927-928; Tr. 252). During this period, Donald Cooke, the sole owner whose place of business was in New York City (R. 925; R. 1856, 1887), spent approximately one week in Los Angeles, from April 28 to about May 5, 1959 (R. 927; Tr. 683). Upon returning to New York City, Donald Cooke interviewed and hired William Wheatley (Wheatley) as program director of KRLA and Edwin Schulz (Schulz) as general manager (R. 927-928; Tr. 295, 674-677, 780-781); and introduced them to his older brother Jack Cooke, who was also in New York at this time (R. 927-928; Tr. 296-302, 674-677).

Jack Cooke, a Canadian citizen who owned radio station CKEY in Toronto, Canada (R. 923, fn. 4; Tr. 388, 393, 394), had invested more than \$553,000 in the purchase of station KRLA's physical equipment, land and transmitter site leaseholds, which he then leased to Eleven Ten (R. 923; R. 2004-2006).^{6/}

5/ Where record references appear in parentheses in the text, references preceding the semicolon are to the examiners' findings and succeeding references are to the supporting evidence.

6/ Before the Commission approved the assignment application, Donald Cooke stated to the Commission that he "recognized that Jack could not participate in the ownership or control of KXLA [now KRLA], either directly or indirectly, so long as he was a Canadian citizen" (R. 925; R. 1996-1997).

Jack spent approximately two weeks in Los Angeles from April 30 through May 13, 1959 (R. 927; Tr. 529). Jack returned to Los Angeles on July 6, 1959 and remained until July 23, 1959 working with Schulz and Wheatley (R. 929; Tr. 529).

Donald Cooke arrived in Los Angeles on August 12 and stayed until August 21, 1959 (R. 930; Tr. 716). He spent most of his time in the Hollywood sales office of KRLA organizing the sales department (R. 930; Tr. 716), and he visited the studios of KRLA on August 20, 1959 for the first time (R. 930; Tr. 716-717). During this time Wheatley had been working on KRLA's new "Top Forty" programming format ^{7/} of music and news. Jack returned to Los Angeles on August 18, 1959, and was told by Donald that KRLA "was a mess" (R. 930; Tr. 431). On August 20, 1959, Donald and Jack viewed a dry run of the new program format prepared by Wheatley (R. 931; Tr. 317-318). Jack was "shocked" by Wheatley's choice of disc jockeys and he so informed Donald (R. 931; Tr. 432). The next day, on August 21, 1959, Donald left Los Angeles for New York City because of "personal and business reasons"; he at that time asked Jack to take over the duties of program director ^{8/} (R. 931; Tr. 722).

In late August and early September, 1959, Jack and others

^{7/} "Top Forty" is a broadcasting term referring to the practice of featuring the forty most popular current musical selections.

^{8/} On or about August 21 or 22, 1959, Wheatley sought to resign as program director, but his resignation did not become effective until September 11, 1959 (R. 932, fn. 15; R. 428-429).

conceived of and conducted two contests on KRLA, one, the "Find Perry Allen" contest, to mark the kick-off of KRLA's "Top Forty" format (R. 935; Tr. 1255); the other, the "Golden Key" contest, to herald KRLA's new power of 50 kw (R. 933; Tr. 637). The examiners found both contests to be improper (R. 967-968).

The "Find Perry Allen" Contest

During the last week of August, Eleven Ten sought to employ Perry Allen, a disc jockey who was then employed by a radio station in Buffalo, New York (R. 935, Tr. 445, 1253-1254). Although Eleven Ten wanted Allen to kick-off its new "Top Forty" program format scheduled to begin on September 3, 1959, Allen was unable to come to Los Angeles before September 12 because his contract with his Buffalo employer required notice of termination (R. 935-936; Tr. 1256-1263). Since Allen could not be at KRLA for the kick-off of the new format, Jack determined that it would be necessary to have a promotional contest centering around him (R. 936; Tr. 623-625). Donald Cooke authorized the contest, knowing that Allen could not be in Los Angeles until September 12, but did not know the details as to how the contest would be conducted (R. 959; Tr. 781).

On August 31, 1959, Jack called Allen in Buffalo and described the "Find Perry Allen" contest (R. 936; Tr. 448,

624). KRLA listeners would be invited to walk up to a person and ask, "Are you Perry Allen, the latest member of KRLA, Eleven Ten?" Clues would be broadcast every day. The first person to locate Perry Allen would get the prize. The prize would start at \$10,000 and decrease by \$1,000 each day until Allen reached Los Angeles, at which time the prize would amount to \$1,000 and the clues would be made very easy. Jack told Allen to prepare and send to KRLA tapes designed to "get everyone, if it were possible, in Los Angeles accosting every little man in Los Angeles with the statement, KRLA, Eleven Ten" (R. 936; Tr. 448-449). In response to Jack's inquiry as to whether he had any particular characteristics that would be noticeable in a crowd, Allen stated that he was short and frequently wore a bow tie and a gray suit (R. 936; Tr. 1264).

Jack directed Allen to tape 12 announcements per day for 10 days along the lines of the following example: "Look for the guy in the bow tie . . . in the Los Angeles restaurant, and if you walk up to the right person and ask [the correct] question . . . you'll win the money." (R. 936-937; Tr. 1264). Allen made and mailed the tapes to Jack who arranged to have them broadcast over KRLA (R. 937; Tr. 449, 627, 1265). In addition, Jack instructed the KRLA announcers to ad lib along with the tapes by saying, in substance, "Go out into the streets of Los Angeles, look in restaurants or in ball parks for Perry Allen" (R. 937-938; Tr. 628, 1217, 1221).

On September 3 and 4, Allen's tapes were broadcast over KRLA, together with an ad lib announcement to the effect of "Go out in the streets . . ." and look for Allen (R. 938; Tr. 1214, 1221). Allen was "found" in Buffalo on September 4 (the second day of the contest) by two employees of another Los Angeles radio station, KFWB (R. 938; Tr. 450-451, 453, 1266). On about October 26, 1959, after extended negotiations, Eleven Ten paid \$10,000 to one of the finders, on behalf of station KFWB, as the prize for finding Allen (R. 938; R. 514, 523, 526).

The "Golden Key" Contest

During the latter part of August, 1959, Eleven Ten possessed a construction permit to increase power from 10 to 50 kilowatts, daytime, and expected shortly to receive authorization from the Commission to commence operation at the higher power (R. 933; Tr. 339). Jack and others conceived the idea of another contest revolving around a Golden Key which would theoretically unlock the new transmitter for KRLA's 50 kw operation (R. 933; Tr. 1182-1183). The key would be hidden, KRLA would broadcast clues to its location, and when the key was found, a money prize would be awarded (R. 933; Tr. 1182-1183). At the beginning of the contest, the prize was to be \$50,000, and as the clues became easier, the prize was to be reduced (each clue was assigned a prize value). (R. 933; Tr. 1182-1183).

Jack buried the key on August 29, 1959 and directed a friend, Frank Loy, and Wheatley, the KRLA program director, to write the clues to the Golden Key contest, but did not tell Wheatley where the key was hidden (R. 934; Tr. 639, 650). Wheatley thereafter wrote, without knowledge of the hiding place, at least twenty clues which were broadcast over KRLA after the contest began on August 30, 1959 (R. 934; Tr. 640-643). For 54 hours, from midnight on September 1 until 6:00 a.m. on September 3, 1959, KRLA continuously broadcast contest clues and nothing else (R. 934; Tr. 646-647, 1174-1177). On September 3, Loy retrieved the key from its original hiding place and hid it at a resort called Marineland (R. 934; Tr. 670). It was not until September 4 or 5 when the prize money had come down to \$40,000 that Loy, at Jack's direction, told Wheatley where the key was buried (R. 934; Tr. 650, 663, 670, 1210). The original clues, written by Wheatley when he had no knowledge of where the key was hidden, were broadcast over KRLA until the morning of September 7 (R. 934; Tr. 1205).

After Wheatley learned that the key was hidden at Marineland, but before September 7, Jack told Wheatley that the key must be found on September 7, Labor Day, because thousands of people would be at Marineland, a popular recreation spot (R. 934; Tr. 1206, 1210). Jack directed Wheatley to write clues so leading that it would be obvious where the key was hidden (R. 934; Tr. 1209). The clues devised by Wheatley pur-

suant to these instructions were broadcast on KRLA for the first time on the morning of September 7, 1959 (R. 934; Tr. 1204, 1210, 1211). A KRLA listener found the key on September 7 and received \$5000 at the KRLA studios to the accompaniment of promotional pictures (R. 935; Tr. 635, 640).

(b.) Falsification Of Program Logs

The examiners also found that program logs submitted to the Commission had been falsified with intent to deceive the Commission and that Donald Cooke, although unaware of the original mislogging, was negligent in investigating the matter prior to submitting a report to the Commission (R. 960-963, 968, 969).

In its assignment application Eleven Ten had represented to the Commission that the percentage of KRLA's programming to be devoted to religion would be 2.1% (R. 1868). The amendment to its renewal application submitted in response to the Commission's request for a program analysis and program logs for the week of October 18-25, 1959, showed religious programming in the amount of 0.16% (R. 943; R. 79). In compiling the program analysis for that week, KRLA's general manager Schulz stated to Herbert Heiman, who had replaced Wheatley as program director (R. 938; Tr. 916) that there was no religion in the program analysis, and none shown in the logs, and that there should be some (R. 961; Tr. 961).^{9/} Schulz in

^{9/} Jack had already left Los Angeles on September 29, 1959 and did not return until the hearing (R. 938, fn. 25; Tr. 459-460).

Heiman's presence directed a KRLA staff member to alter the log for each day by adding the words "Words for the Day" or "Thoughts for the Day", listing the additions as two minutes in length, and classifying them as "Religion" (R. 961; Tr. 961-963). This program was not broadcast during the week of October 18 through 24, 1959; it was not until the first week of November that Schulz ordered Heiman to buy the book containing the material to be used for the program (R. 962; Tr. 973-975).

Following an inquiry from the Commission about the alteration of the logs, Donald Cooke went to Los Angeles with his counsel in January 1960 and questioned Schulz about the matter in Heiman's presence (R. 961; Tr. 735-736, 808-810). Schulz explained that the programs had been broadcast and that he had instructed the staff to correct the logs accordingly (R. 961; Tr. 808-810). Heiman, though he knew Schulz's statements to be false, said nothing (R. 961; Tr. 911, 912, 964, 977, 978). Donald Cooke thereupon attached an affidavit by Schulz in Eleven Ten's response to the question in Commission's Section 309(b) letter regarding falsification of KRLA's logs (R. 960-961; R. 208-209). About three weeks before the hearing, Heiman confessed the truth to KRLA's counsel who, in turn, promptly apprised the Commission (R. 963, n. 38; Tr. 968-969).^{10/}

^{10/} When asked during the hearing why he had not given the true facts to investigators from the Commission who had previously questioned him on August 31, 1960, Heiman replied: "I intended, as I said, to be elusive to the representatives of the Federal Communications Commission" (R. 962-963; Tr. 978).

(c.) The Memorandum of
October 2, 1959

In its assignment application Eleven Ten had promised to broadcast a 1-hour program each week designed for a farm audience, and information, such as farm market prices and weather conditions, of interest to farmers on every newscast 24 times a day (R. 941, 947; R. 1934). Eleven Ten also stated in its assignment application that it planned to schedule each night at 10:40 p.m., Monday through Saturday, a program which would broadcast information concerning civic activities (R. 942; R. 1934).

On October 2, 1959, Donald Cooke sent an office memorandum to Heiman with a copy to Schulz (R. 944). The memorandum, which is set forth in full in the examiners' decision (R. 944-946; R. 712-713) stated in pertinent part as follows:

When I made up the program schedule which was submitted to the FCC and approved by them, I included a farm report on each newscast. I regret now that I did so. However, Pierson, Ball and Dowd urged that KRLA increase its amount of agricultural programming. Thus, the reason for the inclusion of the farm report.

* * * *

Ed Schulz has an idea that the farm market reports can be incorporated in our schedule in the form of "tips to housewives". I don't see how this would help KRLA conform to its proposed broadcast schedule. I think that a 30-second farm market report on certain specified newscasts [emphasis not supplied] (certainly not on the 24 newscasts a day) would fill the bill.

Herb, please give your serious attention to this. I am not anxious to run afoul of the FCC.

By now, you have undoubtedly received a copy of the program schedule which we submitted to the FCC. You will note that KRLA intends to:

(1) Set up a series of religious programs

and

(2) Set up a series of public service talks in the late evening.

Treating first with No. 2, perhaps the use of a public service announcement in a quarter hour, say from 10:30-10:45 P M nightly, will satisfy the FCC.

Ed Schulz tells me that a public announcement in this period without any commercial announcements being included in the period designates the entire 15 minutes as public service. If this is so, are both of you fellows satisfied that we should not have to put a 15 minute talk in?

I understand that the Smog Research Division of UCLA is prepared to give us material for one minute spot announcements which could be used in such a period and which would result in the 15 minute period being classified as public service. As I recall it, Dr. Hagen Smith is the professor or researcher in charge of the smog program and Mr. Jim Miller is the public relations counselor for that part of the university.

As to the series of religious programs, nothing would please me more than to remove the necessity of broadcasting a round table of churches in the 11:00 A M to 12:00 noon period Sundays. If both of you fellows feel that we should have a religious program on the air and, whether we want a religious program on the air or not, we must broadcast one in order to conform to our promise to the FCC, why not put it on between 6:00 and 7:00 A M Sunday mornings? Would this pass

muster? You will also note that KRLA has undertaken to broadcast a 30 second or 60 second message of religious good cheer each morning at 5:59 A M. My thought originally was to invite each clergyman in the Los Angeles area to prepare a 30 or 45 second inspirational message. If we had a back log of 50-100 inspirational messages, they would not wear out their welcome too soon.11/

I am anxious to get your reaction to this memo.

Schulz replied to Donald Cooke's memorandum, stating with respect to agricultural programming that KRLA would insert a 40 second market roundup in the 5:55 and 11:55 a.m. newscasts and would broadcast two 2-minute "featurettes" a day, directed to housewives, explaining the "Best Buys" in produce (R. 946; R. 515). Schulz advised Donald Cooke that this would satisfy KRLA's obligations insofar as agriculture was concerned (R. 946-947; R. 515). Heiman replied to Donald's memorandum on October 4, stating among other things, "We are incorporating thirty seconds of a morning newscast to a Farm Fair . . . of interest mainly to the consumer rather than the farmers" (R. 947; R. 568). On October 26, Heiman advised Donald Cooke that the "farm news" would be broadcast twice a day (R. 952-953; R. 573).

In response to Donald Cooke's inquiry about quarter-hour "public service" segments, Schulz stated that KRLA would

11/ In explanation for the statement in the memorandum about dropping religious programs between 11:00 a.m. and noon on Sundays, Donald Cooke testified that the station was losing money and for this reason he wanted the period sold commercially (R. 946; Tr. 833).

insert one single minute "public service" spot announcement in a sustaining quarter-hour otherwise devoted to "Top Forty" tunes, and log the entire 15 minutes as public service programming (R. 947; R. 515). Schulz informed Donald Cooke, "We do not have to fill the entire 15 minutes with gab" (R. 947; R. 515).

On October 15, 1959, Schulz sent a memorandum to the sales representation organization which sold advertising time for KRLA, pointing out that KRLA was duplicating its weekday programming on Sundays and stating, inter alia (R. 947; R. 718):

Remind your clients too . . . when they call for a Monday through Sunday schedule to ADD MORE SPOTS to cover that all important SUNDAY RADIO AUDIENCE IN L.A.! And ONLY KRLA can offer complete personality programming all day Sunday uninterrupted by commercial religion.

(d.) Misstatements in Eleven Ten's Response to the Commission's Section 309(b) Letter and in the Amendment to its Application

As noted supra, p. 4, on December 16, 1959 the Commission sent Eleven Ten a letter, pursuant to former Section 309(b) of the Act, setting forth various reasons why its renewal application could not be granted without hearing and affording it 30 days within which to reply. Having sought and obtained a further extension of one month in order to "personally verify the information" to be submitted (R. 950; R. 192-194), Donald Cooke went to Los Angeles "to set up a so-called crash program, to get every one of the public service features we have

promised the FCC into effect on KRLA" (R. 951; Tr. 794-795). On February 15, 1960, Eleven Ten submitted, in the form of an amendment to its renewal application, program information "which reflects the manner in which this station is carrying out its original representations made to the Commission at the time it requested approval of the assignment" (R. 950-951; R. 196). It also submitted a program analysis, prepared by Heiman, for the week of January 31-February 6, 1960, during which time Donald Cooke was in Los Angeles (R. 951; R. 238, 241, 331-335, 337, 340, 343-344, 351-352). The examiners found that these amendments, which were submitted under oath, contained several misrepresentations (R. 952-955).

An exhibit entitled "Agriculture in the News" stated that a policy was initiated in October of 1959 to present at 5:55 a.m. and 1:55 p.m. (formerly at 11:55 a.m.) four and one-half minutes of newscasts "devoted to farm news", whereas Schulz apprised Donald Cooke on October 5, 1959 that there would be broadcast a "40-second market roundup in the 5:55 a.m. and 11:55 a.m. newscasts" (R. 952; R. 515). It was also stated in the amendment that 30 seconds of agricultural news would be broadcast in every newscast and that this policy had been fulfilled since January 8, 1960, although it "was not strictly adhered to prior to that date" (R. 952; R. 352). While the

quotation implied that even prior to January 8, 1960, it was the general practice to broadcast farm news in each newscast, Donald Cooke had directed Schulz and Heiman on October 2, 1959 to broadcast farm news "on certain specific newscasts (certainly not on the 24 newscasts a day)" and had been apprised by Heiman on October 4 and 26, 1959, that the "farm" news would be "of interest mainly to the consumer rather than the farmer" and would be broadcast only twice a day (R. 952-953; R. 568, 573).^{12/} In addition, included under the category of agriculture in the February 15, 1960 programming amendment was a program called "Best Buy of the Day", which Heiman subsequently admitted could not properly be classified as agricultural (R. 953; Tr. 981). And, finally, the programming amendment stated that an agricultural program called "KRLA Farm Roundup" consisting of transcribed agricultural information by agricultural experts had been broadcast each Monday morning from 5:00 to 5:50 a.m. since January 11, 1960 (R. 953-954, R. 351). However, Perry Allen, the disc jockey on duty every Monday morning from five to six a.m., testified that he had not broadcast any of the agricultural transcriptions (R. 953-954; Tr. 1272-1274).

^{12/} In a Memorandum, dated January 4, 1960, from Donald Cooke, to Heiman and Schulz, Donald noted that Eleven Ten had promised the Commission to incorporate farm news in every newscast 24 times a day and stated: "KRLA has failed to incorporate farm news in its newscasts. I will never understand why, but the fact is they have not done it" (R. 587).

(e) The Letter of April 12, 1960

On April 6, 1960, less than two months after the February 15, 1960, amendments were submitted, Heiman wrote Donald Cooke asking whether it would be possible to move KRLA's Sunday religious and discussion programming to the period between 6:00 a.m. and 10:00 a.m. and drop some of the religious and educational programs (R. 955; R. 599). In his reply to Heiman on April 12, 1960, Donald Cooke stated in part (R. 956; R. 714):

Just to confirm my feelings about the Sunday religious and public service programming, before doing anything, the following points should be answered in the affirmative:

1. Tommy Dowd [Eleven Ten's counsel] should be consulted and should approve the move ---
2. No move should be made until about a month after the FCC has approved KRLA's request for its license renewal ---

At that time, undoubtedly, we will be able to drop some of the present programming, but we will only do so with the full approval of Pierson, Ball and Dowd, of course.

Rejecting as unsatisfactory Donald Cooke's explanation for this letter (R. 956-957), ^{13/} the examiners concluded that a

13/ Although Donald Cooke testified that his letter concerned educational "shows such as California, Topic Youth, and Seminar" which could not be continued in the summer when schools were closed (R. 956-957; Tr. 792-793), the examiners found that only one of these programs (Seminar) was broadcast during the Sunday morning period involved and that six of the seven remaining programs broadcast in this period were religious (R. 957). The programs Heiman suggested dropping included religious program "Spirit of Today" (R. 965; R. 599). The
(cont'd)

"suspicion at least lingers that his April 12, 1960 instructions were prompted by a desire to make only a temporary and token compliance with the programming representations contained in the assignment application in an effort to forestall action by the Commission" (R. 967).

2. The Examiners' Conclusions

The examiners concluded that Donald Cooke had retained ultimate control of KRLA and that Jack Cooke had not exercised unlawful control of the station in violation of Section 310 of the Communications Act (R. 964-966). While stating that Eleven Ten merited "severe condemnation" for not adhering to the program proposals made in its assignment application, the examiners further concluded that there was no evidentiary showing that these proposals were not initially made in good faith (R. 966-967). The examiners concluded that both contests, and particularly the Perry Allen contest, had been conducted in a "shabby and irregular fashion" and that the station's program time had been subverted to improper purposes, but that these derelictions were to be viewed less stringently than would otherwise be the case because they had been discontinued (R. 967-968). Holding, finally, that the program logs had been altered improperly to deceive the Commission and that Donald Cooke had been neglectful of his duty properly to in-

13/ (cont'd) Commission denied Eleven Ten's exception No. 120, but found that Cooke's explanation went only to the proposed discontinuance of the Seminar program (R. 1260). When asked whether he had any other explanation for the April 12th letter, Donald Cooke had testified "No" (Tr. 793).

form himself before reporting to the Commission on the matter, the examiners nevertheless concluded that responsibility could not be imputed to Eleven Ten because Donald Cooke was unaware of the mislogging until he received notice from the Commission (R. 968).

The examiners summarized their view of Eleven Ten's conduct by stating (R. 968-969): "In sum, the haphazardly directed nature of the station's operations after the Commission was advised, as an inducement for approving the assignment, of definite operational plans; the frantic and undignified promotional activities, supplemented by some days of continuous programming which publicized contests and ignored the station's other obligations to the public; the obviously inept absentee direction marked by programming irresolution; and the failure of Donald Cooke adequately to inform himself regarding program mislogging prior to submission of his report to the Commission, all betoken censurable managerial immaturity and operational shortcomings." For these reasons, the examiners determined that it would serve the public interest to grant Eleven Ten a one-year rather than a three-year renewal of license (R. 968-969).

C. The Commission's Decision, Denial of Reconsideration, and Refusal to Reopen the Record

Eleven Ten filed 135 exceptions to the examiners' initial decision (R. 979-1058), but stated that it acquiesced in the ultimate conclusion that the license of KRLA be renewed

for a one-year period (R. 979). The Broadcast Bureau filed 16 exceptions to this decision (R. 1059-1068), and urged that the application of Eleven Ten be denied (R. 1059). Oral argument was held before the Commission on January 18, 1962 (Tr. 1320-1356).

On February 27, 1962, Eleven Ten filed a petition to reopen the record for the taking of additional evidence with respect to the current operation of KRLA insofar as pertinent to the question of program performance and licensee reliability (R. 1229-1241). Eleven Ten specifically requested that the Commission give consideration to its current public service programming, including, among others, the Catholic High Mass from the Immaculate Conception Church and the hour-long worship service from the Lake Congregational Church (R. 1231).

On March 19, 1962, the Commission released a decision and order (R. 1244-1263) in which it unanimously ^{14/} denied Eleven Ten's applications for the renewal of the licenses of KRLA and for a license to cover its construction permit authorizing 50 kw power, and also denied Eleven Ten's petition to reopen the record. The Commission stated that the examiners' findings of fact had been considered in light of the exceptions filed, and that these findings were adopted

^{14/} Commissioner Cross concurred with the other Commissioners in the decision not to renew KRLA's licenses. He issued a separate statement, however, in which he found that Jack K. Cooke had exercised effective control of KRLA from August 21 to September 14, 1959, and expressed his disagreement with the other Commissioners for their failure so to find (R. 1263).

except as indicated in the decision and in the Commission's rulings on the exceptions (R. 1245).^{15/} However, the Commission disagreed with the examiners' conclusions in the following respects.

Rejecting Eleven Ten's argument and the examiners' view that the conduct of the contests was mitigated by the fact that they took place in the "frantic first days of a new operation" and were not continued, the Commission stated that, in its judgment, the chicanery involved in the contests could not be equated with responsible station operation (R. 1245). It also, unlike the examiners, rejected Eleven Ten's argument that the mislogging of religious programs with intent to deceive the Commission could not be imputed to Eleven Ten because of Donald Cooke's lack of knowledge (R. 1245). Pointing out that the same contention might be advanced to absolve Eleven Ten of responsibility for the contests, the Commission ruled that licensee unawareness is no excuse since it is only by holding a licensee responsible for the operation and management of a station that there can be any reason-

^{15/} The Commission granted Eleven Ten's exceptions Nos. 31, 32, 33, 56, 66, 69, 70, 81, 82, 87, 91, 98, 99, 100, 101, 107, and 131 and made the requested findings indicating the extent to which Donald Cooke participated in and maintained contact with station operation and management (R. 1254). It recognized these findings collectively in par. 7 of its Decision (R. 1246) but concluded that they did not evidence a degree of participation sufficient to alter its conclusion that Donald Cooke did not exercise effective control over station operations (R. 1249-1250, 1254). Much of the evidence adduced by Eleven Ten on this matter covered the period between September 21, 1959 and the date of the hearing, when Jack Cooke was not in Los Angeles (R. 511-547, 568, 573, 578, 579, 581, 585-590).

sonable assurance of responsible station operation and management (R. 1245-1246).

The Commission concluded that the chicanery practiced in the contests within two weeks after Donald Cooke left Los Angeles and the log alterations occurring within two months after he left, could not, as Eleven Ten urged, be dismissed as isolated incidents which could occur even in the best-managed operation as a result of the defection of a trusted employee (R. 1246). It stated that although Donald Cooke was apparently unaware of the log alterations, it was clear from the examiners' findings with respect to the memorandum of October 2, 1959, the responses of Schulz and Heiman, the misstatements in the February 15, 1960 amendments to the renewal application, and the letter of April 2, 1960, that Donald Cooke had joined with his employees in attempting to deceive the Commission with respect to KRLA's programming (R. 1246-1249).

In concluding that the renewal application should be denied, the Commission stated (R. 1249-1250):

The ultimate question posed by the hearing issues is whether a renewal of Eleven Ten's license is in the public interest. In view of the evidence adduced pursuant to the hearing issues, the conclusion is inescapable that responsible management was not characteristic of Eleven Ten's operation of Station KRLA. In its early stages, Donald Cooke failed to maintain effective control of the station's operation and delegated actual control to his brother Jack and to station employees, and during that period the Perry Allen and Golden Key contests

were conducted and the station's logs were altered. While, as we have indicated, even in the best-managed operation isolated instances of such practices could occur, this provides no defense to Donald Cooke's failure to assume effective control over the station's operation; so far as Donald Cooke is concerned, it is purely fortuitous that there were not many more instances of deception. After Donald Cooke assumed a greater interest in the details of station operation, he demonstrated a willingness to connive with station employees in various schemes to hoodwink the Commission into believing that KRLA's programming conformed with its program proposals. A similar effort to mislead the Commission as to KRLA's past programming was made in Eleven Ten's response to the Commission's 309(b) letter -- a response which was submitted following the granting of Eleven Ten's request for additional time for filing a response so that Donald Cooke could "personally verify" its contents. Nearly two months after the response was filed, Donald Cooke indicated a willingness to drop certain programs proposed in the amended renewal application -- but in no event until after the renewal application was granted. This record of neglect, on the one hand, and of efforts to mislead the Commission, on the other hand, disqualifies Eleven Ten from being a licensee of the Commission, and its applications will, therefore, be denied. A willingness to deceive a regulatory body, even as to matters unimportant in themselves, warrants denial of a renewal application. Federal Communications Commission v. WOKO, Inc., 329 U.S. 223 (1939).

The Commission also denied Eleven Ten's request that the record be reopened to receive evidence of KRLA's programming subsequent to the hearing, stating that the "efforts to distort the true character of KRLA's programming were not limited to the period prior to the time that the Commission called KRLA's attention to the fact that its programming was not in accord with its program proposals" (R. 1250).

Finding no mitigating circumstances which would warrant a grant of Eleven Ten's request, (R. 1250), the Commission stated (R. 1250-1251):

It was disposed to deceit in advance of any Commission inquiry; it was disposed to deceit at the time of the Commission inquiry; it was disposed to deceit in the programming it would present after renewal of its license. In view of this continued pattern of deception, a meritorious programming fare, which may have been presented while the disposition of its renewal application was still in doubt, does not provide any assurance that such deception would not subsequently be resumed.

On April 18, 1962, Eleven Ten filed a petition for reconsideration and/or reopening of the proceeding (R. 1294-1387) and subsequently, on June 14, 1962, a request for oral argument (R. 1524-1527). It asserted that the Commission had erred in concluding that the Perry Allen and Golden Key contests were fraudulent, that the Commission had attached undue significance to the contests and log alterations in assessing Donald Cooke's qualifications in that these were isolated instances and not indicative of a pattern of conduct, and that the Commission had imposed on Donald Cooke a standard of absolute liability for the misdeeds of others which was inconsistent with its decisions in other cases (R. 1303-1306, 1307-1310, 1321-1320). Eleven Ten further asserted that the Commission's conclusion that Donald Cooke was guilty of efforts to mislead the Commission was not supported by substantial evidence (R. 1310-1321). It

also claimed that the Commission's decision was based on issues as to "ineffective management control", "connivance with employees" and the Golden Key contest, of which the applicant had no notice, and that it was therefore deprived of procedural due process (R. 1297, 1330-1331).

On July 24, 1962 the Commission issued a Memorandum Opinion and Order denying reconsideration and oral argument (R. 1545-1551). It re-affirmed its conclusions as to the significance to be attached to the contests and log alterations (R. 1546-1547) and re-affirmed its conclusion that Donald Cooke was guilty of efforts to mislead the Commission (R. 1547-1549). In the latter connection the Commission stated that the facts of record admitted of no other reasonable conclusion and that it regarded Eleven Ten's attempt to explain away such facts as "singularly unconvincing and inadequate" (R. 1548-1549). Reiterating its view that under the circumstances of record in this case "the log alterations and contests cannot be dismissed as mere incidents which could occur even in the best managed operations" (R. 1547), the Commission distinguished its more lenient treatment of similar employee misdeeds unknown to the licensee in other cases^{16/} on the ground that the em-

^{16/} Mile High Stations (KIMN), 20 Pike & Fischer, R.R. 345; WNOE, New Orleans, Louisiana (Public Notice 18250, March 29, 1962).

ployee misconduct in those cases stood alone whereas here the contests and mislogging were part of a pattern of deceptive conduct in which the licensee was also involved (R. 1550).

The Commission also rejected as erroneous Eleven Ten's contention that its decision rested on matters beyond the scope of the hearing issues (R. 1549). It pointed out that the facts upon which it relied were properly adduced pursuant to the hearing issues and that the ultimate question posed by the hearing issues was whether a renewal of Eleven Ten's license would be in the public interest (R. 1549). Stating that the findings of the hearing examiners reflected that Eleven Ten was given ample opportunity to explore the evidence adduced, the Commission denied its request for further hearing on issues as to "ineffective management", "connivance with employees", and the "Golden Key" contest (R. 1549).^{17/} It again refused to reopen this record to

17/ The Commission denied Eleven Ten's request that the record be reopened to permit its counsel to testify concerning Eleven Ten's preparation of its response to the Commission's 309(b) letter on the ground that it was not supported by any showing that Eleven Ten was not given an adequate opportunity at the hearing to explain the discrepancies between statements made in its response and other evidence of record (R. 1549). It also denied Eleven Ten's request that the record be reopened to adduce evidence that its counsel personally knew that Donald Cooke did not know of the log alterations until after they were made. The Commission stated that since it had already found that Donald Cooke had no advance knowledge of the log alterations, such testimony would merely be cumulative. (R. 1547, fn. 1).

take account of KRLA's present religious and public service programming, stating that it had considered such programs as were broadcast prior to the Section 309(b) letter and that programs broadcast after the Commission had made clear that its renewal of license was in doubt did not constitute a reliable measure of Eleven Ten as a licensee (R. 1550-1551). And, finally, the Commission decided that there was no necessity to resolve the questions relating to the good faith of the licensee's program proposals in the assignment application and Jack Cooke's control over KRLA's operation since Eleven Ten had failed to persuade the Commission that a renewal of its license would be in the public interest (R. 1551).

On April 18, 1962, petitions for rehearing of the Commission's Decision of March 9, 1962, were also filed by the Immaculate Conception Church of Los Angeles (R. 1401-1407), and by the Lake Congregational Church of Pasadena (R. 1395-1400). Each Church alleged in its petition that it had testified in the proceedings as a person who would be aggrieved and adversely affected if KRLA ceased its operations (R. 1395, 1401); and that the contributions and cooperation rendered to the Churches by KRLA in broadcasting religious programs constituted an overriding consideration in the public interest which warranted a renewal of KRLA's license (R. 1398,

1404, 1405). On July 24, 1962, the Commission released an order denying the petitions for reconsideration and for oral argument filed by the Immaculate Conception Church and the Lake Congregational Church, on the ground that the Commission had considered the religious programming broadcast by KRLA in granting Eleven Ten's Exception No. 104 and that such religious programming did not outweigh the considerations underlying the conclusions reached by the Commission (R. 1552-1553).

Eleven Ten filed a petition for stay pending hearing and determination of an appeal from the Commission's order (R. 1555-1559), and by order released August 7, 1962, the Commission granted such petition (R. 1562).

The appeal in Case No. 17,239 was filed by the two Churches on August 20, 1962. Eleven Ten also filed an appeal with this Court in Case No. 17,240 on August 22, 1962.

On September 27, 1962, the Commission filed a motion to dismiss the appeal of the two Churches in Case No. 17,239 on the grounds that the notice of appeal was fatally defective in failing to show appellants' standing, and that the appellants lacked standing to file an appeal from the Commission's decision. The Churches filed their opposition to the Commission's motion to dismiss on October 26, 1962.

On November 21, 1962, this Court issued an order consolidating Case No. 17,239 with Case No. 17,240, and ordering

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that the Commission's motion to dismiss be held in abeyance pending a hearing of these cases on the merits.

SUMMARY OF ARGUMENT

I.

The Commission properly determined that the renewal of Eleven Ten's license for station KRLA was not in the public interest. This determination is supported by substantial evidence in the record which shows that Eleven Ten falsified its program logs with intent to deceive the Commission, that it conducted two contests which were a fraud on the public in that it knowingly broadcast fake clues, that Donald Cooke repeatedly attempted to deceive or mislead the Commission, and that he was negligent and irresponsible in managing station KRLA.

The Commission committed no procedural error in arriving at the above determination, and it afforded Eleven Ten a full and fair hearing. Despite Eleven Ten's contention that the specific hearing issues did not comprehend the "Golden Key" contest, Donald Cooke's attempts to deceive the Commission, or his irresponsible management of KRLA, the whole course of the proceedings before the Commission demonstrates that Eleven Ten had actual notice of and did litigate these matters in full, that it was afforded ample opportunity to be heard, and that it was unreasonably tardy and without justification in claiming surprise. Accordingly, Eleven Ten may not now challenge these issues. Kuhn v. Civil Aeronautics Board, 87 U.S. App. D.C. 130, 183 F.2d 839; Mansfield Journal Co. v.

Federal Communications Commission, 86 U.S. App. D.C. 102, 180 F.2d 28.

II.

The Commission properly determined that Eleven Ten's record of deception during the license term warranted denial of its application, without consideration of its programming after December 16, 1959, the date on which the Commission notified Eleven Ten that its renewal was in doubt. Eleven Ten's argument, and that of the Churches, that the Commission committed error in failing to give consideration or decisional value to evidence as to KRLA's programming after December 16, 1959, and to the impact which the elimination of KRLA would have upon the public, is foreclosed by the decisions of the Supreme Court and this Court in Federal Communications Commission v. WOKO, Inc., 329 U.S. 223; Federal Communications Commission v. Broadcasting Service Organization, 337 U.S. 901; and Independent Broadcasting Co. v. Federal Communications Commission, 89 U.S. App. D.C. 396, 193 F.2d 900, cert. denied, 344 U.S. 837.

The public will not be injured by the denial of Eleven Ten's application for renewal, since the Commission's action makes this frequency available to other applicants who will be able to meet the area's need for meritorious public service programming and who will be able to satisfy the character qualifications necessary for licensing.

III.

The Commission's decision contains the necessary findings of fact, conclusions of law, and intelligible rulings on exceptions. There is no merit in the argument of Eleven Ten and of the Churches that the Commission's decision and orders are invalid because they were not written in the manner desired by the appellants. Scripps-Howard Radio, Inc. v. Federal Communications Commission, 89 U.S. App. D.C. 13, 189 F.2d 677, cert. denied, 342 U.S. 830. The Commission's decision complied with the standards enunciated in Radio Station KFH Co. v. Federal Communications Commission, 101 U.S. App. D.C. 164, 247 F.2d 570. Thus, the Commission made and adopted findings of the basic facts from which it drew its ultimate findings, and made specific rulings on all the exceptions, so as to leave no doubt as to what it had in mind with respect to any of the material issues or to any group of minor matters that may have cumulative significance.

ARGUMENT

I. THE COMMISSION PROPERLY DETERMINED THAT RENEWAL OF ELEVEN TEN'S LICENSE FOR STATION KRLA WAS NOT IN THE PUBLIC INTEREST

The Commission's determination that the public interest would not be served by renewal of Eleven Ten's license, rests initially on findings that Eleven Ten falsified its program logs with intent to deceive the Commission and conducted two contests which were a fraud on the public in the sense that it knowingly broadcast fake clues (R. 1245). The Commission rejected Eleven Ten's defense that this misconduct should not be imputed to Donald Cooke, despite his legal responsibility as the licensee, because the incidents occurred early in a new operation and he was unaware of them. It declined to regard the contest chicanery and mislogging as mere isolated incidents in a well-managed operation or to excuse them, in view of the record as a whole and the evidence of Donald Cooke's negligent mismanagement of the station and his continuing efforts to mislead the Commission (R. 1245-1246, 1249-1250, 1547, 1550). In addition, the Commission concluded that Donald Cooke's irresponsible management and attempted deception were further affirmative reasons why renewal of the license was not in the public interest (R. 1250, 1549).

Eleven Ten does not seriously challenge the substantiality of the evidence supporting the Commission's findings as

to the contests and mislogging or claim any procedural deficiency except as to the Golden Key contest. Rather, its brief is primarily devoted to two arguments: (1) that the findings as to Donald Cooke's efforts to mislead the Commission and negligent management of the station are arbitrary and not supported by substantial evidence on the record considered as a whole (App. Br., pp. 34-47), and (2) that these findings are in any event beyond the scope of the issues in this case and may not be utilized by the Commission either as a basis for rejecting its defense to the contest and mislogging conduct or as an additional affirmative reason for denying a renewal of license (App. Br., pp. 28-35).

We shall show below: (A) that the Commission's findings as to Donald Cooke's deception and negligence have ample record support and are reasonable, and (B) that appellant's claim of procedural invalidity lacks merit, since the question of Donald Cooke's deception and negligence flowed logically from the hearing issues and became significant in the Commission's decision largely because of Eleven Ten's defense to the contest and mislogging conduct; these matters, as well as the Golden Key contest, were actually litigated in full; Eleven Ten was afforded a fair opportunity to prepare its case and to be heard; and the entire course of the proceedings demonstrates that it has no proper basis for claiming

surprise.

- A. The Commission's findings that Donald Cooke attempted to deceive the Commission and failed to manage Station KRLA responsibly, are supported by substantial evidence in the record considered as a whole and are reasonable.

1. The Attempted Deception

The Commission's finding that Donald Cooke repeatedly attempted to deceive or mislead the Commission has ample support in the record. As set forth in the Counterstatement, pp.16-18, in his October 1959 memorandum to KRLA employees Donald Cooke, among other things, connived with Heiman and Schulz to "satisfy the FCC" by mislogging an "entire 15 minutes as public service", even though this program of "Top Forty" tunes contained only a one minute public service announcement (R. 1247, 945-946; R. 712-713, R. 515). Moreover, although commenting in this memorandum that he did not see how "tips to housewives" would "help KRLA conform" to its promise to the Commission to include a farm report on each of 24 newscasts a day, Donald Cooke directed Schulz and Heiman to include farm news on "certain specific newscasts (certainly not on the 24 newscasts a day)", and acquiesced in their reply that the "farm" programming would be "of interest mainly to the consumer rather than farmers" (R. 1246, 945; R. 712-713, R. 515, 568). In a January 4, 1960 memorandum to Heiman and Schulz,

Donald Cooke stated (R. 587): "KRLA has failed to incorporate farm news in its newscasts. I will never understand why, but the fact is they have not done it."

Thereafter, having sought and obtained an extension of time to reply to the Section 309(b) letter, purportedly in order to "personally verify the information" to be submitted to the Commission (R. 1247, 950; R. 192-194), but actually in order "to set up a so-called crash program, to get every one of the public service features we have promised the FCC into effect on KRLA" (R. 951; Tr. 794-795), Donald Cooke filed material with the Commission on February 15, 1960, which contained misrepresentations as to past and present agricultural programming.

Thus, a program, "Best Buy of the Day", was improperly classified as agricultural, even though Heiman knew the classification to be erroneous (R. 1248, 953; Tr. 981) and the October 1959 memorandum reflects Donald Cooke's own knowledge that programs in the nature of "tips to housewives" could not properly be classified as agricultural (R. 1246, 945; R. 712-713). Donald Cooke further represented to the Commission that his policy of broadcasting agricultural news on every newscast "was not strictly adhered to" prior to January 8, 1960, thus conveying the impression that this policy had existed to some extent prior to that time (R. 1248, 952; R. 352). Yet the record establishes that as of

January 4, 1960, Donald Cooke knew "the fact is" that "KRLA has failed to incorporate farm news in its newscasts" (R. 587); that he had instructed Heiman and Schulz on October 2, 1959 to broadcast farm news "on certain specific newscasts (certainly not on the 24 newscasts a day)" (R. 1248, 952; R. 712-713; and that he had been apprised by them later in October that farm news was being broadcast only on two newscasts a day (R. 1248, 952-953; R. 515, 573). In addition, Donald Cooke represented to the Commission that the farm news instituted on these two newscasts in October was four and one-half minutes in length, although he had been previously told by Schulz that the farm news was only 40 seconds in length (R. 1248, 952; R. 515). And, finally, Donald Cooke represented to the Commission that a program of transcribed agricultural information, called "KRLA Farm Round-up", had been broadcast 5:00-5:50 a.m. each Monday morning since January 11, 1960, when in fact the agricultural transcriptions had not been broadcast and the program, which consisted mostly of recorded music presented by disc jockey Perry Allen, was misclassified (R. 1248, 953-954; R. 351; Tr. 1272-1274).

The evidence not only establishes that Donald Cooke sought to mislead the Commission with respect to past agricultural programming in the February 1960 amendments to its

renewal application, but also supports the Commission's finding that he attempted to deceive the Commission as to the programming he would present after renewal of his license. (R. 1250). For, having set up a "crash program" of agricultural, religious and public service programming in January in response to the Commission's Section 309(b) letter, and having represented to the Commission in February that this was how he intended to operate the station in the future, Donald Cooke wrote Heiman in April, 1960 that some of the Sunday religious and public service programs could be dropped "about a month after the FCC has approved KRLA's request for its license renewal" (R. 1249, 956; R. 714).

In light of the foregoing largely documentary evidence as to Donald Cooke's conduct in October, 1959 and February and April, 1960, as well as the earlier incidents of deceptive contests and falsification of program logs, we submit that there is substantial record support for the Commission's finding that Eleven Ten "was disposed to deceit in advance of any Commission inquiry; it was disposed to deceit at the time of the Commission's inquiry; it was disposed to deceit in the programming it would present after renewal of its license" and that the "continued pattern of deception" was attributable to Donald Cooke (R. 1250-1251, 1549). The Commission properly took account of Eleven Ten's asserted defenses to the evidence (R. 1547-1548) and was well warranted by the record in regard-

ing its "attempts to explain away such facts or to dismiss the obvious problems raised thereby as mere differences of opinion or as the result of faulty memory as singularly unconvincing and inadequate" (R. 1549).

Thus, Eleven Ten urged before the Commission (R. 1548) and contends in its brief (p. 36) that there is no substantial evidence for the "only possible legitimate charge of misrepresentation" in the February 1960 amendments, the misrepresentation that agricultural transcriptions prepared by eminent individuals had been broadcast in the "KRLA Farm Round-up" program since January 11, 1960. It asserts that "no positive contradictory evidence that the transcriptions were not broadcast was adduced and that the finding to this effect is based merely on testimony that Perry Allen "did not recall" whether or not they had been broadcast (Br. 36). We believe Eleven Ten's description of the record to be inaccurate. Perry Allen, the disc jockey who was on duty at that hour and conducted the program (Tr. 1272), testified as follows (R. 1273-1274):^{18/}

Q. Were you directed to play any special tapes on this show that might have been prepared by such eminent people as Hardin, President of the American Association of Land Grant Colleges and State Universities and Chancellor of the University of Nebraska?

A. I can say this, that they were not played, and I don't recall being told -- however, if I might?

Q. Sure.

^{18/} Eleven Ten represented to the Commission that the transcriptions included comments by: Dr. C. M. Hardin, President, American Association of Land Grant Colleges, and others (R. 351).

A. Mr. Heiman on several occasions gave me discs, transcribed spots of varying lengths, and said: Do you think these things would be applicable or usable on the program? In no case did I use them, but they were presented to me.

Q. Did you ever broadcast them?

A. No.

Q. Do you ever recall broadcasting any tapes prepared by any of the individuals listed on Part 5 of the amendment to which I am referring?

A. No. I don't.

Eleven Ten's attempt (Br. 36-37) to explain away its misrepresentation that the "Best Buy of the Day" program was agricultural, as a mere "change of opinion" by Heiman "upon reconsideration", is equally unfounded. Heiman defined an agricultural program at the hearing as "the transmitting of information of agricultural messages or needs to the members of the agricultural community, of farmers and growers, et cetera" (Tr. 980), and admitted that the Best Buy program did not fit this definition because it was addressed to housewives (Tr. 981, 984). Asked why he had classified the program as agricultural, Heiman testified (Tr. 984):

It is addressed to housewives, yes; among them, I am sure are a great many of the wives of agricultural personnel.

Q. Is that your explanation, sir?

A. Yes, sir.

Under Heiman's criteria, the program could as well have been classified as religious or educational if the audience included

wives of clergyman or teachers.

Nor is there greater merit to Eleven Ten's further contentions (Br. 37-39) that the Commission was "picayune" to rely on the misleading statement that the policy of farm news on all newscasts was "not strictly adhered to" prior to January 11, 1960; that it ignored rapidly changing operation conditions in pointing to misstatement as to the length of the farm news incorporated in the two newscasts "approximately in October". Appellant also urges (App. Br. 36, 37) that none of the four misrepresentations as to agricultural programming can properly be attributed to Donald Cooke, since Heiman prepared the programming exhibits and Donald Cooke was entitled to rely on his advice as program director. However, Eleven Ten obtained the extension of time to file the February, 1960, material in order that Donald Cooke might "personally verify the information" to be submitted to the Commission (R. 1247, 950; R. 192-194). That the misrepresentations in the material submitted may have been trivial viewing each incident separately, ^{19/} does not exculpate Eleven Ten. As the Commission stated (R. 1250), it is the "willingness to deceive a regulatory body, even as to matters unimportant in themselves", which constitutes the heart of the offense. "The fact of concealment may be more significant than the facts concealed", and a "willingness to deceive a regulatory body may be disclosed by immater-

^{19/} Moreover, even leaving aside one or more of these misrepresentations, we believe that the Commission's finding as to a pattern of deception otherwise has substantial evidentiary support.

ial and useless deceptions as well as by material and persuasive ones." Federal Communications Commission v. WOKO, Inc., 329 U.S. 223, 227.

Eleven Ten's defense to the October, 1959, memoranda at the hearing and to the finding that they reflect Donald Cooke's "willingness to connive" with employees to deceive the Commission, is likewise unpersuasive. It urges (App. Br. 40-42) that such conduct cannot be inferred from the evidence as to Donald Cooke's regret at having proposed farm news in all newscasts in the assignment application on advice of counsel, his concern as to whether farm news on certain specific newscasts only would "fill the bill", and his query whether rescheduling religious programs would "pass muster" with the Commission. Nor, according to Eleven Ten (App. Br. 42-43), can any adverse inference be drawn from the evidence that Donald Cooke and Schulz sought to avoid filling "15 minutes with gab" and yet enter a one-minute public service announcement in a 15-minute program of recorded music as a 15-minute public service program in records kept for submission to the Commission.

However, as the Commission noted (R. 1246), the memorandum clearly shows that Donald Cooke not only countenanced but also suggested ways in which Eleven Ten might make changes in KRLA's programming and yet make it appear to the Commission that it had conformed to the program proposals in the assign-

ment and renewal applications. Moreover, neither Eleven Ten's explanation of the memorandum at the hearing (that program changes were occasioned by the fact that the station was losing money, R. 946; Tr. 833) nor the contention in its brief (p.42), that the record contains no suggestion that Donald Cooke intended to conceal any of the program changes from the Commission, suffices to refute the clear inference that Donald Cooke and Schulz connived to deceive the Commission as to the "public service" program. Since the remaining 14 minutes of this program were to be recorded music without commercial advertising (R. 515), the misclassification would not financially aid the station. Furthermore, Donald Cooke attempted to conceal the fact that farm news was presented on only two newscasts and that an "agricultural" program was actually "tips to housewives" in his February, 1960, submission to the Commission.

Additionally without merit is Eleven Ten's argument (App. Br. 43-44) that the Commission could not reasonably infer from Donald Cooke's April, 1960, letter to Heiman that he attempted to deceive the Commission as to the programming he would present after the renewal of his license. Donald Cooke testified that the "reason for the letter itself" was that educational programs could not be continued in the summer because schools were closed, and when asked whether he had any other explanation for the letter, testified "No" (Tr. 792-

793). As the Examiners pointed out (R. 956-957, 967), this explanation affords no satisfactory reason why Donald Cooke proposed to drop religious, as well as educational programs. Moreover, Donald Cooke did not state in the letter that Heiman could drop the educational programs when schools closed and upon notice to, and approval by, the Commission. Rather, the letter states that Eleven Ten will be able to "drop some of the present programing" "about a month after the FCC has approved KRLA's request for its license renewal" and after approval by its counsel (R. 714). Eleven Ten does not, and cannot according to Donald Cooke's testimony at the hearing (Tr. 793), explain why Donald Cooke should anticipate that the closing of schools would coincide with a date 30 days after the renewal of license, when the grant would become final and beyond challenge under Section 402 and 405 of the Communications Act. Nor does Eleven Ten explain why Heiman was to continue educational programs beyond the closing of schools if that event should precede a date 30 days after the renewal of KRLA's license.

In sum, we submit that the evidence supporting the Commission's finding that Donald Cooke had repeatedly attempted to deceive it, is "substantial, when viewed in the light that the record in its entirety furnished, including the body of evidence opposed to the . . . [Commission's] view" (Universal Camera Corp. v. Labor Board, 340 U.S. 474, 488), and that

the inferences drawn by the Commission are reasonable.

2. Donald Cooke's Irresponsible Management

The Commission's finding that Donald Cooke was negligent and irresponsible in managing station KRLA, likewise has substantial support in the record. As set forth in the Counter-statement, the evidence demonstrates that although Donald Cooke was in Los Angeles from August 12 to August 21, 1959, when the station was in the hands of a newly hired general manager and a new program director, he visited the KRLA studios for the first time on August 20 and otherwise devoted his time to the commercial aspects of KRLA's operation (R. 930; Tr. 716). He departed for New York the next day, knowing that the station "was a mess" and leaving the actual operation and control of the station variously in the hands of his brother Jack and several station employees (R. 1246, 930-932; Tr. 431, 722). Although this departure was occasioned by urgent "personal" reasons, he maintained contact with station operation by correspondence and telephone and authorized the "Find Perry Allen" contest, with knowledge that Perry Allen would not be in Los Angeles until September 12th but without inquiring as to the details of the contest (R. 1547, 959; Tr. 781). As the examiners and the Commission concluded (R. 967-968, 1245), the chicanery involved in the two contests conducted by Jack in late August and early September (when the station

ignored its programming obligations to the public and broadcast nothing but contest clues continuously for 54 hours), cannot be equated with responsible station management.

Following Jack's permanent departure from Los Angeles on September 21, 1959 (Jack did not return to Los Angeles until shortly before the hearings in November, 1960 (Tr. 459-460)), Eleven Ten submitted program logs at the Commission's request, which had been falsified by the station's general manager, Schulz (R. 1245, 960-963; Tr. 961-963). Although Donald Cooke was unaware of the original falsification, he had been questioned by the Commission about the matter, and then failed to investigate the matter adequately in January, 1960, before submitting a report to the Commission which contained a false explanation by Schulz. He limited his inquiry to Schulz and did not question Heiman, who was present and knew the true facts, and did not ascertain from any other station employee that the religious programming had actually been broadcast (R. 961).^{20/} Certainly, in light of the gravity of the Commission's inquiry concerning falsification of program logs, it is submitted that it was incumbent upon Donald

^{20/} The Commission properly declined to reopen the record to receive testimony from Eleven Ten's counsel that Donald Cooke was unaware of the original mislogging by Schulz. As the Commission noted, such testimony would be only cumulative support for a finding already made upon other evidence of record (R. 1547).

Cooke to have tried to discover how a complaint of logging falsification could have been brought against KRLA at the very outset, and then to have probed thoroughly enough until he uncovered the truth.

After assuming more effective control of the station in the fall of 1959, Donald Cooke encouraged Schulz and Heiman in October to misclassify a one-minute public service announcement as 15 minutes of public service programming (R. 1247, 945-947; R. 712-713). He also vacillated in his programming instructions to KRLA employees, first instructing Schulz and Heiman in October to incorporate farm news on certain specific newscasts only (R. 712-713) and then instructing them in January to include farm news on all newscasts with the comment that he would "never understand why" they had previously failed to do so (R. 587). Donald further "personally verified" and submitted to the Commission in February, 1960 programming information prepared by Heiman which was false (R. 1247-1248, 951-954).^{21/} And, in issuing instructions in April, 1960 as to the station's future opera-

^{21/} Even if the representation to the Commission that Donald Cooke would "personally verify" the information to be submitted was that of Eleven Ten's counsel rather than Donald Cooke, one would think that a licensee, charged by the Commission with having submitted false information, would exercise due care to make sure that subsequent representations to the Commission were true, even if the material were prepared by subordinates. See Donald Cooke's testimony to this effect (Tr. 797).

tion, he authorized Heiman to drop certain programs proposed in the amended renewal application -- but in no event until 30 days after the renewal application was granted (R. 1249, 956).

As the examiners concluded, certainly some of these matters "betoken censurable managerial immaturity and operational shortcomings" (R. 969). Viewed in its entirety, we submit, the foregoing evidence furnishes ample support for the Commission's finding that Donald Cooke did not fully and responsibly discharge his duties in managing the station as a Commission licensee (R. 1245-1246, 1249-1250, 1547).

Appellant urges (Br. 45-46) that the Commission could not rely on Donald Cooke's absence from the station in late August and early September, because he used reasonable care in selecting those left in charge of the station's operations, and further (App. Br. 31-32) that the Commission erred in declining to reopen the record to receive evidence as to "the exact nature of the family reasons for Don's departure from the station during the critical early days of its operation" when the contest chicanery and log falsification occurred. These arguments lack merit.

While a licensee may be the victim of misdeed by one or possibly even two employees despite the use of reasonable care in selecting and controlling a supervisory staff, it strains credulity to believe that five persons disposed to misconduct

would be selected. Donald Cooke left the programming of the station in the care of his brother Jack, who conducted the fraudulent contests and broadcast contest clues continuously for 54 hours. He employed Wheatley, who wrote contest clues as to the whereabouts of the Golden Key when he did not know where the key was hidden (R. 934; Tr. 639, 650), and Perry Allen, who taped contest clues knowingly designed to mislead the public into thinking he could be found in Los Angeles prior to September 12, 1959 (R. 936-937; Tr. 1264). Donald Cooke employed general manager Schulz, who falsified the program logs, lied about the matter when questioned, and urged Donald Cooke on in the scheme to misclassify the 15 minute "public service" program. And, finally, Donald Cooke employed program director Heiman, who knew the truth about the log falsification yet failed to challenge the false explanation of Schulz made in his presence; who concealed the truth from Commission investigators when questioned about the matter because he "intended . . . to be elusive to the representatives of the FCC" (R. 962-963; Tr. 978); and who prepared the programming material containing the misrepresentations which were submitted to the Commission on February 15, 1960.

Moreover, the nature of Donald Cooke's personal reasons for leaving Los Angeles on August 21, 1959, could not serve to relieve him of responsibility for the misconduct that occurred during this period or for irresponsible mismanage-

ment of the station at other times. Just as a parent remains responsible for the welfare and care of a young child even if he is compelled to be absent from the child for a good reason such as health, so also, we submit, an absentee licensee cannot avoid responsibility for the proper operation of a station merely because his reason for being absent may be justifiable. As the Commission pointed out (R. 1547), Donald Cooke maintained contact with the station by telephone and correspondence while he was absent for "personal" reasons, and that he "did not fully and responsibly discharge his duties, notwithstanding the correspondence he had with station personnel, is reflected by the fact that although he knew and approved the general nature of the Perry Allen contest, he was unaware of its details when he authorized it". In addition, much of the evidence supporting the finding of irresponsible management concerns later periods of time when Donald Cooke had assumed greater control of the station and was irresponsible in the affirmative measures he took (R. 1247-1248, 945-947, 951-954; R. 712-713).^{22/}

^{22/} Contrary to Eleven Ten's suggestion (App.Br. p. 47), the Commission considered the evidence adduced by it as to the extent to which Donald Cooke participated in and maintained contact with station operation and management (R. 1254). However, it concluded within its competence that this evidence did not show a degree or kind of participation sufficient to alter its conclusion in par. 14 of the decision that Donald Cooke did not exercise effective or responsible control over station operations (R. 1249, 1255).

B. Eleven Ten's Claim of Procedural Invalidity
Lacks Merit

Eleven Ten argues (Br. 28-34) that the Commission committed procedural error and failed to afford it a full and fair hearing to the extent that the Commission relied in its decision on findings as to the Golden Key contest, Donald Cooke's attempts to mislead the Commission, and his irresponsible management of the station. It urges that these matters were beyond the scope of the specific hearing issues and that it had no notice they were in controversy or opportunity to cure surprise. For the reasons set forth below, we believe that this argument is highly technical; the whole course of the proceedings before the Commission demonstrates that Eleven Ten had actual notice of, and did litigate these matters in full, that it was afforded ample opportunity to be heard, and that it is unreasonably tardy and without justification in claiming surprise.

1. The "Golden Key" Contest

Eleven Ten asserts in its brief (p. 22, 29-30, fn. 20) that the "Golden Key" contest was beyond the purview of Issue No. 2, relating to the Perry Allen contest, because it was not specifically mentioned in that issue. However, the evidence as to the manner in which the "Golden Key" contest was conducted is obviously relevant to shed light on any ambiguity in the contemporaneously conducted Perry Allen contest, and the

record clearly shows that Eleven Ten had ample notice both before and during the hearing that the "Golden Key" contest would also be considered by the Commission.

At the Prehearing Conference held at Los Angeles on October 28, 1960, Mr. Thomas Dowd, counsel for Eleven Ten, stated that he had been informed by Mr. Robert J. Rawson, counsel for the Commission's Broadcast Bureau, that the latter intended to cover the "Golden Key" contest, and that he had some reservations about this because the contest was not a specific issue (Tr. 38-39). Mr. Dowd then said:

It [the "Golden Key" contest] has not been made a specific issue by the Commission. But again I am not wrapping myself in the flag, incidentally, but again in the interest of the conclusion of this, so there will be no more reservations that we have tried to withhold information, I will go ahead with this contest, because as I say, on a time basis it fits into the progression of the station. And this, again, may have some effect upon the determination of the Commission as to witnesses.

But in doing so, I do note, as I say, the reservation that I have some question as to its materiality.

* * *

But I will waive it in the interest, because I think it will be faster to go ahead with it than to argue about it. (Tr. 39)

Subsequently, at the hearing on November 3, 1960, Jack Cooke testified in detail about the "Golden Key" contest when under cross examination by Mr. Rawson (Tr. 635-645). Mr.

Dowd again challenged the materiality of this testimony, and asked for a ruling (Tr. 644-645); Mr. Rawson argued that the testimony was admissible under Issues Nos. 1 and 2 (Tr. 643). The Examiner thereupon overruled Mr. Dowd's objection and ordered the testimony admitted, and Mr. Dowd took exception (Tr. 645).

Thereafter, Eleven Ten filed Proposed Findings of Fact on March 13, 1961, in which it set forth findings 128 through 133 with respect to the "Golden Key" contest, subject to the qualification that objection had been made to this line of inquiry as beyond the scope of the issues, that the objection was overruled, and that the findings were included only for convenience (R. 789). Following the issuance of the Examiners' Initial Decision, Eleven Ten filed its exceptions in which it included Exception No. 58 (R. 1003) to the ruling of the Examiners overruling its objection to the consideration of the "Golden Key" contest or any contest other than the "Find Perry Allen" contest in these proceedings for the reasons stated in the transcript at pages 643-645. The Commission denied the exception, noting that its consideration of the "Golden Key" contest had "not deprived Eleven Ten of procedural due process since the findings of the Hearing Examiner reflect that it was given ample opportunity to be heard with respect to this matter" (R. 1549, 933-935).

In light of the foregoing, it is plain that Eleven Ten

had actual notice that the "Golden Key" contest would be considered and that the Commission's ruling complied fully with the language of this Court in Kuhn v. Civil Aeronautics Board, 87 U.S. App. D.C. 130, 132-133, 183 F.2d 839, 841-842, as follows:

The whole thrust of modern pleading is towards fulfillment of a notice-giving function and away from the rigid formalism of the common law. It is now generally accepted that there may be no subsequent challenge of issues which are actually litigated, if there has been actual notice and adequate opportunity to cure surprise. If it is clear that the parties understand exactly what the issues are when the proceedings are had, they cannot thereafter claim surprise or lack of due process because of alleged deficiencies in the language of particular pleadings. Actuality of notice there must be, but the actuality, not the technicality, must govern.

2. Donald Cooke's Irresponsible Management of the Station.

In defending against Issues Nos. 2 and 3, involving improper conduct in the broadcast of the "Find Perry Allen" contest and in the falsification of the program logs, Eleven Ten did not seriously seek to contravert the plain and admitted evidence of misconduct. Instead, it sought to avoid responsibility by establishing that Donald Cooke did not know of, and consequently should not be held accountable for, these improprieties. That Eleven Ten was fully aware that the interjection of this defense would lead inevitably to a further question as to whether Donald Cooke was negligent and irrespon-

sible in his absentee control of the station is demonstrated by the quantity of evidence it adduced at the hearing in an attempt to show that, although Donald Cooke was an absentee owner, he was nevertheless making every effort by correspondence and by personal visits to maintain responsible and effective control over KRLA (Tr. 692, 693, 780, R. 511-547, 567-590).

In addition to the testimony of Donald Cooke, (Tr. 419, 692), Eleven Ten submitted exhibits containing numerous items of correspondence between Donald Cooke and members of the KRLA staff to support its contention that he was maintaining responsible control over KRLA's programming, financial matters, and general progress. (Tr. 1312, R. 511-547, 567-590.) A considerable portion of this evidence (R. 511-547, 567-590) covered the period of October 5, 1959 through January 14, 1960, after Jack's departure from Los Angeles on September 21, 1959, and hence was not directed toward Issue 4 (whether Jack Cooke was exercising control of the station), but rather toward establishing that Donald Cooke was exercising responsible, effective control -- an issue inherent in its defense to Issues 2 and 3.

After the record was closed, Eleven Ten submitted at least twenty-four proposed findings (Nos. 155-178, R. 799-808), all designed to show that Donald Cooke had maintained effective control of KRLA both before and after Jack's departure.

While the hearing examiners agreed with Eleven Ten's defense to Issues 2 and 3, they granted it a short term, rather than the usual 3 years, renewal because of their conclusion as to Donald Cooke's managerial responsibility, stating (R. 968-969):

In sum, the haphazardly directed nature of the station's operations after the Commission was advised, as an inducement for approving the assignment, of definite operational plans; the frantic and undignified promotional activities supplemented by some days of continuous programming which publicized contests and ignored the station's other obligations to the public; the obviously inept absentee direction marked by programming irresolution; and the failure of Donald Cooke adequately to inform himself regarding program mislogging prior to submission of his report to the Commission, all betoken censurable managerial immaturity and operational shortcomings.

In its exceptions to the Examiners' decision, Eleven Ten challenged the evidentiary support for the foregoing conclusion and sought further findings on the abundant evidence it had adduced as to the extent of Donald Cooke's participation in station management, but did not claim surprise that the examiners were concerned with the caliber of Donald Cooke's management (R. 993-1026, 1056-1058). Moreover, although it petitioned the Commission to reopen the record to receive evidence of Donald Cooke's operation of the station subsequent to the hearing (R. 1229-1236), Eleven Ten did not request an opportunity to adduce any further evidence as to

Donald Cooke's management prior to April, 1960, except to proffer the cumulative testimony of its counsel in support of the Examiners' finding, sustained by the Commission, that Donald Cooke was unaware of the original mislogging by Schulz, a request which the Commission properly denied (R. 1547). The Commission granted Eleven Ten's exceptions to the extent of making the requested findings, but concluded that they did not overcome the considerable showing, upon the record as a whole, that Donald Cooke was negligent and irresponsible in the management of the station (R. 1255).

In claiming surprise for the first time in its petition for reconsideration before the Commission (R. 1297, 1330-1332) and again in its brief to the Court (pp. 31-32), the only specific matter to which Eleven Ten points in support of its assertion that it was misled into not adducing evidence, is the nature of Donald Cooke's "personal" reasons for leaving Los Angeles on August 21 when he knew the station "was a mess". Since the Examiners made adverse findings as to these matters (R. 931, 965-966) and relied on the "haphazardly directed nature of the station's operations" and the "obviously inept absentee direction" in reaching their conclusion of "censurable managerial immaturity", Eleven Ten's assertion of surprise seems pointedly belated. Moreover, as pointed out supra, p. 54-55, the justifiability of Donald Cooke's "personal" reasons for leaving the station, could not absolve him of responsibility

for the proper operation of the station.^{23/} We submit that Eleven Ten's real quarrel with the Commission's Decision is not that it "added" an issue of responsible management, which had already been interjected by Eleven Ten's defense to the contests and mislogging, but rather that the Commission found further evidentiary support in the record for the Examiners' finding of "managerial immaturity" and that it concluded that there was warrant not for a one year renewal but for no renewal at all.

Eleven Ten cannot be heard to argue that it saw no need to claim surprise at the Examiners' adverse findings because they had granted it a one-year renewal. The Examiners' decision was subject to review and reversal by the Commission, and the Broadcast Bureau was urging strongly that this be done. Under these circumstances, fairness to the Commission required Eleven Ten to assert promptly any claim of prejudice or surprise and to point out to the Commission at that stage any procedural deficiency it saw in the Examiners' adverse findings and conclusions. As the Court stated in Colorado Radio Corp. v. Federal Communications Commission, 73 App. D.C. 225, 227, 118

^{23/} While the nature of Donald Cooke's personal reasons might have afforded an equitable basis for excusing the contests and mislogging if these were isolated incidents, as Eleven Ten was urging, the Commission's finding that Donald Cooke was guilty of a pattern of neglect and deceit makes any equitable considerations going to one incident far less significant.

F.2d 24, 26:

Appellant took its chance that the Commission on the existing record, would revert to its previous decision although it had been set aside. Now that the decision has gone against it, the appellant wants a chance to persuade the Commission with a supplemental record. We cannot allow the appellant to sit back and hope that a decision will be in its favor, and then, when it isn't, to parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed.

See also Interstate Commerce Commission v. Jersey City, 322 U.S. 503, 514-515; and cf. Brown Telecasters v. Federal Communications Commission, 110 U.S. App. D.C. 127, 289 F.2d 868; cert. denied, 368 U.S. 916.

3. Donald Cooke's attempted deception

Three of the first four issues in the hearing order raised questions of deceit. Issue 1 was to determine whether "in light of its operations since it acquired Station KRLA", the licensee acted "in good faith" in making the program proposals contained in its assignment application; Issue 2 was to determine whether the licensee was operating the station for improper purposes in light of the deceptive manner in which the "Find Perry Allen" contest was conducted; and Issue 3 was to determine whether the station's program logs had been altered "with the intent and purpose of deceiving the Commission" (R. 353-354). While the issues were drawn on the

basis of the imperfect information then available to the Commission, and without benefit of the full record as to Donald Cooke's conduct which was developed at the hearing, they clearly sufficed to call into question the licensee's character and propensity toward deception.

The bulk of the evidence as to Donald Cooke's efforts to deceive the Commission came in under Issue 1. The Broadcast Bureau attempted to prove that Donald Cooke had acted with bad faith and intent to deceive the Commission in 1958 by showing repeated acts of bad faith and deceit in 1959 and 1960 and establishing from this circumstantial evidence an inference of initial bad faith.^{24/} For example, it sought to show that because Donald Cooke promised religious and public service programs in the February 15, 1960 amendments to the renewal application which he intended to drop once the renewal was granted, as evidenced by the April, 1960, letter, he might well have acted with similar bad faith and deceit in the promises made in the 1958 application. Eleven Ten did not move to strike Issue 1 insofar as it stated that bad faith in 1958

^{24/} As the Broadcast Bureau pointed out in its brief in support of exceptions to the Examiners' initial decision (R. 1070-1071), the Examiners' conclusion that a direct evidentiary showing relating to 1958 was essential, ignored the plain wording of Issue 1, which "of necessity . . . requires a retrospective application of KRLA's operations to the question of intent" in 1958, since bad faith is "rarely susceptible of direct proof", citing Philadelphia Storage Battery Co. v. Kelley-How-Thomson Co., 64 F.2d 834, 837 (C.A. 8), cert. denied, 290 U.S. 651.

could be shown by subsequent matters; nor did it object to the introduction of evidence of subsequent matters as irrelevant to the issue.

Hence, in defending against the charge of bad faith in 1958, Eleven Ten could not rely solely on an argument that bad faith in 1958 could not validly be established by evidence of subsequent bad faith and deceit. It was required to defend the merits of the subsequent conduct and to refute any adverse inference of bad faith or deceit in the events of 1959 and 1960, as well taking care of the possibility that the Broadcast Bureau's position might eventually prevail before the Commission. Eleven Ten knew, furthermore, that attempts to deceive the Commission go to the heart of a licensee's fitness. It has long been settled by decision of the Commission and the courts that conduct of this nature may warrant a denial of license. See Federal Communications Commission v. WOKO, Inc., 329 U.S. 223; Federal Communications Commission v. Broadcasting Service Organization, 337 U.S. 901, reversing per curiam, 84 U.S. App. D.C. 152, 171 F.2d 1007; Independent Broadcasting Co. v. Federal Communications Commission, 89 U.S. App. D.C. 396, 193 F.2d 900, cert. denied, 344 U.S. 837; Calumet Broadcasting Corporation v. Federal Communications Commission, 82 U.S. App. D.C. 59, 160 F. 2d 285. As the Commission found (R. 1549), Eleven Ten was afforded a full opportunity at the hearing to explain the evidence there adduced with respect to

its entire course of conduct, and to rebut the inferences of bad faith. It did in fact proffer defenses, and relies on these defenses in challenging the substantiality of the evidence supporting the Commission's finding of attempted deception. Moreover, as shown in the Counterstatement and Point A, the inferences of Donald Cooke's repeated attempts to mislead the Commission fairly leap from the evidence, largely documentary and self-contradictory, which was adduced in the record before the hearings at Los Angeles were recessed on November 9, 1960.

The hearings were resumed at Washington, D. C. on December 22, 1960. During this six-week interval Donald Cooke and his counsel had ample opportunity to review the transcript of the hearings and to study the exhibits introduced by counsel for the Broadcast Bureau. Certainly, if Eleven Ten had any further defenses or explanations to offer with respect to Donald Cooke's conduct, it had sufficient time to prepare them. When the hearings were resumed, Eleven Ten offered in evidence some 67 items of correspondence for the purpose of showing that Donald Cooke was exercising adequate managerial control over the station, but did not seek leave further to rebut the evidence of deception or request any extension of time for the purpose of so doing (Tr. 1312).

Nor can Eleven Ten claim that the only purpose of the evidence as to events in 1959 and 1960 was to show that Eleven

Ten's programming in 1959 and 1960 fell short of its 1958 promises. As Eleven Ten points out in its brief (p. 40), the Commission does not censure program changes made for good reason, since it expects licensees to be responsive to the changing needs of the community and to make such program changes as the licensees find, upon experience, to be desirable.

That Eleven Ten had no doubts when the record was closed that its integrity and good faith were in issue is demonstrated by the proposed findings of fact and conclusions which it filed on March 13, 1961 (R. 740-832). In this document it titled its first major issue as "The Misrepresentation Issue" (R. 752), and incorporated under this heading, among other defenses, a justification for its failure to adhere to its public service programming proposals during the period to December 16, 1959 (R. 760-761), as well as a defense of the charge that its KRLA Farm Roundup program was improperly classified as agricultural (R. 763). Further proof that both Eleven Ten and the Broadcast Bureau were in agreement that the basic issue went to matters of intent and deceit, though on opposite sides as to what the evidence showed, is reflected by comparison of their proposed conclusions to the Hearing Examiners.

Thus, Eleven Ten proposed the following conclusion (R. 822):

Any analysis of the evidence of record compels the conclusion that the grant of the pending KRLA

applications would serve the public convenience, interest, and necessity. The evidence establishes that nothing has been done which impugns the character, intent or motive of the licensee or reflects adversely upon the ability of the licensee to maintain the presently high standard of service now being provided by KRLA.

[Emphasis supplied]

While the Broadcast Bureau, in contending that a grant of Eleven Ten's application for renewal of its licenses would not serve the public interest, submitted the following conclusion (R. 906):

This result is compelled not only on the basis of the conclusions we have reached under the specific issues, but is dictated also since the evidence demonstrates that Eleven Ten as a licensee has been shown to have a proclivity for knowingly furnishing false and misleading information to the Commission.

Although the Examiners ruled for Eleven Ten on Issue 1, on the ground that there was no evidentiary showing relating to the time of filing the 1958 application (R. 966-967), they set forth all the evidence as to deceit in 1959 and 1960, specified the misrepresentations in the February 1960 amendments to the renewal application and pointed out the inconsistencies with other evidence of record, including the October 1959 documentary evidence as well as the adverse inference of deceit to be drawn from the April 1960 letter (supra., pp. 16-22). Eleven Ten did not claim surprise at the Examiners' inclusion of this material in its exceptions to the initial decision and, although it petitioned the Commission to reopen the record for evidence of matters subsequent to the hearing,

did not seek in the petition an opportunity to adduce further evidence to rebut the matters discussed by the Examiners.

Moreover, Eleven Ten, itself, raised the issue as to whether the record showed a pattern of deception by claiming, by way of defense to the log falsification, that this was only an isolated incident, unknown to Donald Cooke, in an otherwise impeccable operation and should accordingly be excused in line with the Commission's decisions in other cases. Having made this argument both before the Examiners and the Commission (R. 824, 1549, 1550), Eleven Ten cannot reasonably object that the Commission looked to the whole record to determine whether the defense had merit. Nor, we submit, can it properly complain that the Commission utilized the repeated acts of deception shown by its review of the record as a further affirmative reason why a renewal of license was not in the public interest.^{25/}

Thus, any "Possibility of doubt as to the purpose of the hearing was removed in its course before the Commission." Northwestern Bell Telephone Co. v. Nebraska Railway Commission, 297 U.S. 471; cf. Civil Aeronautics Board v. State Air-

^{25/} In this connection, it should be noted that Issue No. 5 was to "determine, in light of the evidence adduced pursuant to the foregoing issues, whether a grant of the above-entitled applications would serve the public interest, convenience or necessity." We do not argue that this general, legal issue would encompass matters of which Eleven Ten had no actual notice or which were not litigated. However, in the circumstances of this case, we believe that the fifth issue affords further justification for the Commission's action in affirmatively relying on the evidence as to deception and negligence in addition to utilizing it to reject Eleven Ten's defense to Issues 2 and 3.

lines, Inc., 338 U.S. 572. The circumstances of this case are comparable to the situation presented in Kuhn v. Civil Aeronautics Board, 87 U.S. App. D.C. 130, 133, 183 F.2d 839, 842, where this Court stated:

Although the Initial Decision contained no specific finding on the lookout issue, it was discussed at some length and the observation was made that "Defendant's lack of precaution in maintaining an increased vigilance at that time appears inexcusable." Certainly, at that point, if not sooner, petitioner had notice. That he acted upon such notice is indicated by the fact that, in his appeal to the Board, he took specific exception to the Examiner's comments on the lookout issue * * * When the Board sustained the Examiner's decision, petitioner filed a petition for reconsideration, in which he again discussed the lookout problem. Nevertheless, the Board reaffirmed its prior decision.

* * * * *

Since it is apparent that petitioner had actual notice, the only possible ground for reversal of the Board's decision would be a showing of lack of opportunity to introduce additional evidence after notice was brought home to him. In other words, there must be a showing that petitioner was prejudiced by whatever delay or informality there may have been in the notice received by him. He has not succeeded in making such a showing.

Eleven Ten likewise has not succeeded in making a showing of prejudice. It asserts in general terms (App. Br. 31) that it "could and would have offered testimony which would have successfully refuted any deceptive intent or motive" and that "such minor factual discrepancies as may appear in the record . . . could have been adequately explained." How-

ever, nowhere in its brief does it describe specifically what further testimony or explanation on the matters of deception would have been offered.^{26/} Nor does it explain why it failed to offer any such testimony or explanation when expressly requested to do so at the hearing. For example, Donald Cooke sought to explain away the adverse import of his April, 1960 letter (Tr. 791-792), and when asked whether he had any "other explanation", testified "no" (Tr. 793). Similarly, Heiman could offer no satisfactory explanation with respect to the misclassification of the "Best Buy" program, although he was given the opportunity to do so (Tr. 984). Since Eleven Ten does not claim that the Examiners improperly curtailed its opportunities to cross-examine or submit rebuttal testimony, and since it failed to offer any further testimony or explana-

^{26/} In its petition for reconsideration before the Commission, Eleven Ten requested the Commission to reopen the record to permit its counsel to testify concerning Eleven Ten's preparation of its response to the Commission's 309(b) letter (R. 1301, 1320). The Commission denied this request on the ground that it was not supported by any showing that Eleven Ten was not given an adequate opportunity at the hearing to explain the discrepancies between the statements made in its response and other evidence of record (R. 1549). We submit that this ruling was proper in view of the record showing that Eleven Ten was afforded ample opportunity to be heard at the hearing, and also in view of Eleven Ten's failure to proffer the testimony of its counsel on December 22, 1960, at a time when it had had six weeks to study the record for unexplained discrepancies. Moreover, Eleven Ten does not point to this ruling in its brief as a basis for its assertion or prejudice.

tion on December 22, 1960, after six weeks within which to ascertain the obvious discrepancies in the record,^{27/} we believe that this testimony of Donald Cooke and Heiman given under oath at the hearing should carry greater weight than any afterthoughts which may be proffered in Eleven Ten's reply brief to bolster the presently unsupported claim of prejudice.

In light of the foregoing discussion it is altogether inappropriate for Eleven Ten to rely upon Kuhn v. Civil Aeronautics Board, 87 U.S. App. D.C. 130, 133, 183 F.2d 839, 841-842, as authority for its contention that the Commission should have "reopened the record to give appellant a fair opportunity to meet charges of deception and indifference on the part of Don." (App. Brief, p. 30). For, in the Kuhn case this Court affirmed an order of the Civil Aeronautics Board based on a procedural record which in substantial respects was very similar to the one here involved, and held that as long as the petitioner had actual notice of the questioned issue as early as the release of the Examiner's initial decision, and thereafter litigated such issue, he could not subsequently challenge the propriety of the Board's consideration of that

^{27/} Compare, e.g., Perry Allen's testimony that the agricultural transcriptions in the "KRLA Farm Round-up" program had not been broadcast (Tr. 1274), with Eleven Ten's representation to the Commission on February 15, 1960, that they had (R. 351).

issue.^{28/} See also, Brahm v. Federal Radio Commission, 61 App. D.C. 204, 205, 59 F.2d 879, 880; Dart Transit Co. v. Interstate Commerce Commission, 110 F. Supp. 876, 879 (D.C. Minn., 4th Div. 1953).^{29/}

^{28/} The rationale for this Court's view was prefaced by the statement, 87 U.S. App. D.C. 132, 183 F.2d 841, that the "whole thrust of modern pleading is towards fulfillment of a notice-giving function and away from the rigid formalism of the common law." The Court then noted (in footnote 3) as follows:

"See 2 Moore's Federal Practice 1607-10, 1618 (1948); Clark, Code Pleading 30 (1928) (' * * * we have spent altogether too much thought over the danger of surprising a defendant. If his case is prepared at all adequately he will not be surprised. Our solicitude for him will simply result in giving him opportunities to delay the case and harass his opponent. The main purpose of the pleadings should therefore be to give the trial court a proper understanding of the case.')

"Rule 15(b) of the Federal Rules of Civil Procedure, 28 U.S.C.A., demonstrates the tenor of modern practice: 'Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues * * '. (Emphasis supplied. [By the Court])"

^{29/} Thus, in the Dart Transit Co. case, supra, the Court stated, at 110 F. Supp. 879, "It is not enough to invalidate a hearing that the notice given to a litigant, who was already aware of the issues to be tried, did not contain a complete and precise bill of particulars."

The action of the United States Supreme Court in Federal Communications Commission v. Broadcasting Service Organization, 337 U.S. 901, reversing Broadcasting Service Organization v. Federal Communications Commission, 84 U.S. App. D.C. 152, 171 F.2d 1007, is particularly appropriate to the instant case. There the Commission initially refused to renew the license of a radio broadcasting station upon finding that there had been willful and knowing misrepresentations of fact concerning the licensee's stock ownership and financial status. The Commission stated in its decision:

*** the continued series of misrepresentations and concealments * * * clearly demonstrates that the applicant does not possess the necessary character qualifications for a licensee of a radio station, and that the public interest, convenience and necessity will therefore not be served by grant of a renewal of license to this applicant.

On appeal to this Court the Commission's decision was reversed and the case was remanded, 84 U.S. App. D.C. 152, 171 F.2d 1007, upon the Court's finding that the Commission's action was arbitrary, capricious, and unreasonable. The Supreme Court granted certiorari, 336 U.S. 950, and then sustained the Commission's denial by reversing the Court of Appeals in a per curiam decision without comment, 337 U.S. 901, citing only Federal Communications Commission v. WOKO, Inc., 329 U.S. 223, despite an assertion by the respondent Broadcasting Service Organization, substantially similar to Eleven Ten's (App. Br., 28-34), that the Commission erred in denying renewal of its license on the ground

that respondent did not possess the necessary character qualifications because "the character of respondent was not in issue and notice of such issue and opportunity to introduce evidence thereon was not afforded respondent " ^{30/} (See Brief for Broadcasting Service Organization, Inc , Case No 584, in the Supreme Court of the United States, October Term, 1948, pp 49-53)

In conclusion, we submit that the essential thrust of Eleven Ten's argument was encompassed by a similar argument advanced in the case of Mansfield Journal Co. v Federal Communications Commission, 86 U.S App D C , 102, 110, 180 F 2d 28, 36 This Court disposed of the contention as follows

Appellant claims that it did not have reasonable notice that newspaper ownership, the competitive practices of the newspaper, and the relationship between it and station WMAN, were to be in issue. In the designation for the AM hearing it was specifically set forth that "the policies of the applicant * * * corporations [Mansfield and Lorain] with respect to exclusive advertising contracts, and whether such policies are to be pursued in the operation of the proposed stations" were to be considered. As the applicant corporations were newspapers, as the advertising practices were conducted by Mansfield as a newspaper, and as the practices were directed at the competition offered by station WMAN, it would appear that such a designation was adequate. Further, appellant not only failed to object at the hearing to the evidence adduced by

^{30/} This contention was raised by the Broadcasting Service Organization, Inc., in its notice of appeal and in the brief in the Court of Appeals; however, the Court of Appeals did not rule upon this point in its decision.

the Commission on such matters, but also introduced evidence in point. Designations for hearing, like pleadings under modern procedure, are for the purpose of reasonably apprising the party of the issues involved, and are not to be struck down for non-prejudicial deficiencies. New York Cent. & H.R.R. Co. v. Interstate Commerce Commission, C.C., 168 F. 131, 138-139; cf. N.L.R.B. v. Mackay Co., 304 U.S. 333, 58 S. Ct. 904, 82 L. Ed. 1381. Even if the designation for the AM proceeding was not as complete as might be desired, it is clear that appellant was at all times fully aware of the matters in issue. That the Commission's final decision reads in terms of monopolization of the media of mass communication and of advertising monopoly is not to take the case beyond the issues framed and heard. There may be a semantic difference, but the underlying problem was the same.

See also, National Labor Relations Board v. Mackay Co., 304 U.S. 333, 349-350.

II. THE COMMISSION PROPERLY DETERMINED THAT ELEVEN TEN'S RECORD OF DECEPTION DURING THE LICENSE TERM WARRANTED DENIAL OF ITS APPLICATION WITHOUT CONSIDERATION OF ITS PROGRAMMING AFTER DECEMBER 16, 1959.

Eleven Ten's Argument IV (Br. 47-50) and the Churches' Argument I (Br. 22-35) both urge that the Commission committed error in failing to give weight to evidence as to KRLA's programming after the end of 1959, and to the impact which the elimination of KRLA would have upon the public interest. However, these contentions are foreclosed by decisions of the Supreme Court and this Court. Federal Communications Commission v. WOKO, Inc., 329 U.S. 223, 228-229; Federal Communications Commission v. Broadcasting Service Organization, 337 U.S. 901; Independent Broadcasting Co. v. Federal Communications Commission, 89 U.S. App. D.C. 396, 193 F.2d 900, cert. denied, 344 U.S. 837.

The principle is now firmly established by these cases that attempts to deceive the Commission warrant denial of an application, without regard to the fact that the applicant may otherwise be qualified. Certainly, the appellants cannot validly claim surprise or discriminatory treatment because the Commission applied the precedent of Federal Communications Commission v. WOKO, Inc., ^{31/} supra, here.

The Commission thus did not commit reversible error in denying Eleven Ten's request that it reopen the record to receive evidence of its programming and station operation subsequent to the hearing, or by refusing to take account of Eleven Ten's "crash program" of religious and public service broadcasts following Donald Cooke's receipt of the letter written pursuant to the then Section 309(b) of the Act raising questions concerning the renewal application. The Commission considered the religious and public service programs which were broadcast by KRLA prior to December 16, 1959, the date of the Section 309(b) letter. It did not abuse its discretion in declining to consider subsequent programming and operations, particularly in view of the evidence that Eleven Ten did not substantially improve its programming until the renewal of its license was in doubt, and then was willing to abandon the programming proposed to the Commission once that doubt was removed.

^{31/} The reliance of the Churches (Br. 27-34) upon the Commission's action in renewing the licenses of the Westinghouse Broadcasting Company, Re Westinghouse Broadcasting Company, 22 Pike & Fischer, R.R. 1023, is misplaced. The misconduct of the Westinghouse firm involved antitrust violations outside the broadcast field, and not the misuse of a radio license.

The public will not be injured by the denial of Eleven Ten's application for renewal, since the Commission's action makes this frequency available to other applicants who will be able to meet the area's need for meritorious public service programming and who will be able to satisfy the character qualifications necessary for licensing.

III. THE COMMISSION'S DECISION CONTAINS THE NECESSARY FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INTELLIGIBLE RULINGS ON EXCEPTIONS.

There is no merit in Eleven Ten's Argument V (Br. 51-54) or the Churches' Argument II (Br. 36-41) that the Commission's decision and orders are invalid because the Commission did not rewrite the examiners' initial decision completely, and because the Commission did not attach decisional significance to many of the numerous points and exceptions tendered by the appellants.

Examination of the Commission's final Decision of March 19, 1962 (R. 1244-1263), and of the Memorandum Opinion and Orders of July 24, 1962 (R. 1545-1551, 1552-1553), shows that the Commission carefully complied with the requirements of Section 8(b) of the Administrative Procedure Act, 5 U.S.C. 1007(b), and of Section 1.157(b) of its own Rules, 47 CFR 1.157(b),^{32/} by enunciating

^{32/} Section 8(b) of the Administrative Procedure Act provides in pertinent part:

" * * * All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof."

Section 1.157 of the Rules of the Federal Communications Commission provides: (cont'd)

either explicitly, or by reference to an explicit statement in the examiners' initial decision, its findings of fact and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record; by ruling on each relevant and material exception filed; and by issuing appropriate orders denying the application of Eleven Ten and the relief sought by the Churches.

The technique used by the Commission of writing a relatively short final decision in which it adopted the examiners' findings, except as stated in the body of the decision and in specific rulings attached in appendix form (R. 1252-1262), was warranted by the complicated factual background of this case. The examiners' decision (R. 921-969) was 49 pages long and contained 103 separate findings of fact. Eleven Ten filed 135 exceptions, covering 47 pages (R. 980-1027) and raised numerous points, many of which had relatively little relevance, if any, to the decisional issues. Even if the Commission had written an entirely new complete decision, there would have remained the problem of making clear why particular findings of the examiners were not included, e.g., a recitation of findings

32/ (cont'd) "(b) The final decision shall contain: (1) Findings of fact and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record; (2) Ruling on each relevant and material exception filed; and (3) the appropriate rule or order and the sanction, relief or denial thereof."

omitted because of immateriality. It is certainly debatable whether such a document would possess any superiority in clarity over the one written by the Commission, where ready reference to the specific ruling on each exception is provided by the appendix, with special notation on the decisional ^{33/} importance of the exceptions granted.

In any event, the important fact is that the Commission made and adopted findings of the basic facts from which it drew its ultimate findings, and made specific rulings on all the exceptions, including every minor one, so as to leave no doubt as to what it had in mind with respect to any of the material issues or any group "of minor matters that may have cumulative significance". See Radio Station KFH Co. v. Federal Communications Commission, 101 U.S. App. D.C. 164, 166, 247 F.2d 570, 572. The standards enunciated by this Court in the Radio Station KFH Co. case, supra, and in WLOX Broadcasting Company v. Federal Communications Commission,

^{33/} See, for example, the Commission's rulings on Eleven Ten's Exceptions 31, 32, 33, 56, 66, 69, 70, 81, 82, 87, 91, 98, 99, 100, 101, 107, 131, where the Commission granted the exceptions and then stated: "These findings indicate the extent to which Donald Cooke participated in and maintained contact with station operation and management, and they are recognized collectively in par. 7 of the Decision. However, taken as a whole, these facts do not evidence a degree of participation sufficient to alter our conclusion in paragraph 14 that Donald Cooke did not exercise effective control over station operations" (R. 1256).

104 U.S. App. D.C. 194, 260 F.2d 712, with respect to the necessity for clarity of findings and rulings certainly have been satisfied here.

Eleven Ten complains (Br. 52-54) that although the Commission acknowledged and granted a large number of its exceptions, the procedure was a farce because these findings "were emasculated by failing to bring them into the decision." Eleven Ten, however, ignores the plain fact that so many of its exceptions involved matters of no decisional significance that it could readily obtain favorable rulings on these exceptions without changing the Commission's basic findings as to Eleven Ten's record of misconduct and of deception. After all, a favorable ruling by the Commission on Eleven Ten's exceptions regarding the introduction of evidence showing that Donald Cooke had been in steady correspondence with Edwin Schulz and Herb Heiman during October and November, 1959, could not alter the fact that during this period Donald Cooke had conspired with Schulz and Heiman, by his memorandum of October 2, 1959 (R. 712-713), and by Schulz's reply of October 5, 1959 (R. 515), as well as by Heiman's reply of October 4, 1959 (R. 568), to mislead the Commission as to Eleven Ten's failure to honor its agricultural programming commitments.

Similarly, the complaint of the Churches (Br. 36-41) that the Commission failed to render findings and conclusions on the religious programming of KRLA after January, 1960, is based on the erroneous concept that the Churches' religious programming

was relevant, notwithstanding Eleven Ten's disqualification by reason of its deception and irresponsible conduct. This argument is foreclosed by Federal Communications Commission v. WOKO, Inc., 329 U.S. 223, 228-229 and by Deep South Broadcasting Co. v. Federal Communications Commission, 107 U.S. App. D.C. 384, 278 F.2d 264. The Deep South case specifically stated, in accord with the WOKO holding, that the Commission need not make findings on other questions where it disqualifies an applicant on one ground. The Churches' argument that the WOKO case is not controlling because it was decided prior to the effective date of the Administrative Procedure Act, and that the Deep South Broadcasting Co. case, supra, is still not controlling, even though it was decided in 1960, long after the effective date of the Administrative Procedure Act, necessitates no further comment.

Both Eleven Ten (Br. 52) and the Churches (Br. 24) have noted the fact that the Commission's Memorandum Opinion and Order of July 18, 1962, released July 24, 1962 (R. 1545-1551), differs in certain respects, particularly in the wording of paragraph 14 (R. 1551), from that published in the printed advance sheet of the Federal Communications Commission Reports, Volume 33, No. 2, pages 92-97. The Opinion and Order published in the Reports is incorrect and was erroneously forwarded to the Superintendent of Documents. The Opinion and Order in the record before the Court is the official, approved Commission

document, and was correctly certified to the Court by the Commission. Counsel for the Commission orally informed counsel of Eleven Ten of this fact prior to the filing of the appellants' briefs. Eleven Ten's comment that this error of transmission compounds its "doubts as to whether the Commission fully comprehended the underlying facts" (App. Br. 52, n. 54), shows no confusion prejudicial to appellants' ability to prosecute this appeal. None is involved.

In summation, the essential complaint of the appellants is that they have not controlled the exact form or content of the Commission's decision. The law is well settled that this is not legal cause for complaint. See Scripps-Howard Radio, Inc. v. Federal Communications Commission, 89 U.S. App. D.C. 13, 16, 189 F.2d 677, 680, cert. denied, 342 U.S. 830.

CONCLUSION

For the foregoing reasons, the decision of the Commission should be affirmed. The appeal of the Churches should be dismissed for the reasons set forth in the Commission's "Motion to Dismiss" in Case No. 17,239, filed with this Court on September 27, 1962.

Respectfully submitted,

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FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D.C.

March 25, 1963

REPLY BRIEF FOR APPELLANT IN NO. 17,240

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 17,239

Immaculate Conception Church of Los Angeles *and*
Lake Congregational Church of Pasadena,

Appellants

v.

Federal Communications Commission,

Appellee

NO. 17,240

Eleven Ten Broadcasting Corporation,

Appellant

United States Court of Appeals
for the District of Columbia Circuit

v.

FILED APR 22 1963

Federal Communications Commission,

Nathan J. Paulson
CLERK

Appellee

Appeal from Decision and Orders of the
Federal Communications Commission

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April 17, 1963

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,239 and 17,240

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Appellants,

v.

Federal Communications Commission,

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v.

Federal Communications Commission,

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On Appeal from Decision and Orders of the
Federal Communications Commission

REPLY BRIEF FOR APPELLANT IN NO. 17,240

I. The Commission's Brief Fails to Justify the Error of Deciding the Case on Issues Beyond the Scope of Those Actually Litigated

A. The Hearing Order Cannot be Construed as Giving Implied Notice of the Enlarged Issues

Appellant has strongly urged that it did not know, and could not reasonably have been expected to know, that it was charged with the particular offenses of which it was ultimately found guilty. The Commission's brief has failed to refute this claim of prejudicial error.

The Commission's position primarily is that appellant should have realized that the evidence adduced in its defense under the promulgated issues might be relevant also to other potential issues. In effect, it seeks to impose upon appellant the impossible burden of refuting all adverse inferences of deceptive propensities which might conceivably be drawn from the evidence. This proposition is untenable even under the most extreme view of modern pleading.¹ If the Commission is right in requiring a litigant at its peril to guess at the real issues, little is left of the statutory prescription that the Commission "shall notify the applicant" of "the grounds and reasons" for holding the hearing, "specifying with particularity the matters and things in issue but not including issues or requirements phrased generally."²

The Commission itself held the key to procedural due process. It could have informed appellant of any enlargement of issues on which the case might turn either before or during the trial and given appellant an opportunity to litigate them in full. Or, if the enlarged issues did not become significant until after the record was closed, it could have reopened the record for such further evidence as appellant sought to offer. There was no emergency which justified the Commission's procedural

¹See cases cited in appellant's opening brief (p.33) and 3 Moore's Federal Practice, pp. 846-847 (2d Ed. 1948).

²Section 309(b) of the Communications Act, 47 U.S.C. 309(b). See also, Section 5(a) of the Administrative Procedure Act, 5 U.S.C. 1004(a).

shortcut. The courts have repeatedly emphasized that the essence of justice is largely procedural.³

The procedural error is not erased by the Commission's transparently weak assertion (Br. 65) that the first three issues "clearly sufficed to call into question the licensee's character and propensity toward deception." If the order of designation is to be given any effect as a delineation of issues, it must be interpreted as calling appellant's character and propensities into question only with respect to the matters specified.

Nor is it enough to maintain (Commission's Br. 39) that these enlarged issues "flowed logically" from the hearing issues and "became significant" in the Commission's decision because of the nature of appellant's defenses to certain specific issues. The crucial fact is that the new and enlarged issues were not squarely brought home to appellant.

It could hardly be argued that the statutory requirement of particularity of issues would have been met if the Commission had included an issue: "To determine whether the licensee has demonstrated a 'proclivity' or a 'propensity' to deceive the Commission." A fortiori, the Commission was wrong in deciding this case as if such an issue had been present.

B. The New Issues Were Not Actually Litigated

Apparently doubtful of the adequacy of the pleadings to put appellant on notice, the Commission's brief attempts to mobilize alleged indications that the decisive issues had been actually litigated. These attempts are also ineffectual.

³Davis, The Requirement of a Trial-Type Hearing, 70 Harv. L. Rev. 193, 274 (1956).

For example, the interoffice memoranda of October, 1959 and April, 1960 and the response to the 309(b) letter on February 15, 1960 were not introduced either by appellant or the Broadcast Bureau to establish whether or not deceptive statements were made in 1959 and 1960. Rather, they were designed to show whether or not the licensee's programming representations contained in the assignment application of 1958 were made in good faith in the light of appellant's subsequent conduct. The Commission's brief does not dispute this fact (Br. 65).

Similarly, the Commission (Br. 60) fails to establish that an issue of Don's "neglect" of the station was knowingly litigated by virtue of the fact that evidence was introduced of correspondence and other contacts between him and the employees. This evidence was directed only toward Issue 4, and the purpose obviously was to establish quantitatively that Don had not transferred control of the station to Jack. It was not aimed at the quality of Don's management, or his broadcasting ability, or the prudence or wisdom of his directions to the staff.

If appellant had known that a question was involved as to whether or not Don had neglected the station, it would have introduced evidence to meet that point, including evidence of the extensive time and efforts devoted by him to station affairs while he was in New York.⁴ It would also have established the range and magnitude of the problems which Don solved successfully in transforming KRLA from a 10- to a 50-kilowatt operation in a relatively short time. Such evidence would have refuted any charge of irresponsibility or neglect.

The Commission contends (Br. 60) that evidence of Don's correspondence and contacts with station personnel necessarily related to the

⁴For example, the Commission stresses (Br. 50) that Don's irresponsibility is evidenced by the fact that he left the station soon after stating it "was a mess." As the Examiners pointed out, "the 'mess' referred to was not explained in the record. It may, indeed, have related to Don's knowledge of the sales department." (R. 930, n. 12)

question of "neglect" rather than "control" since it covered in part the period after Jack's departure from the station. This contention is patently unsound. The control issue, by its terms, was not restricted to any particular period. The Broadcast Bureau attempted to establish that control had been transferred to Jack even while he was absent from the station. The evidence of the continuity of Don's contacts was designed to counteract such an inference by showing that throughout the period (from the time the station was purchased by Don until the time of the hearing), it was Don rather than Jack who was actually giving the orders.

It is inaccurate to assert (Commission's Br. 68) that appellant evinced, in its proposed findings and conclusions, knowledge that its *general* integrity and good faith were in question (a) by using the title "The Misrepresentation Issue," (b) by attempting to justify its failure to adhere to public service programming proposals prior to December 16, 1959, and (c) by defending the classification of the Farm Roundup program as agricultural. An examination of the proposed findings and conclusions (R. 752-764) will readily show that the title and text referred only to the issue of whether appellant's programming promises in its 1958 assignment application had been made in good faith: and the marshalling of programming evidence was designed for that issue and not for any general issue of integrity.⁵

The Commission states (Br. 69) that the Examiners specified the

⁵It is fallacious to attribute knowledge of enlargement of the issues to appellant from the fact that in the proposed conclusions (quoted at pages 68-69 of the Commission's brief) appellant stated that the evidence established no conduct which impugned its "character" and "ability." In context, all that was meant was that, so far as the specific issues were concerned, appellant's character and ability had not been discredited. Under the statute, the Commission set down for hearing only those matters on which it was unable to make favorable findings from an examination of the application itself. In substance, appellant was saying no more than that, on the basis of the hearing on the four specific questions, it was entitled to a clean bill of health.

evidence as to "deceit" and "misrepresentations" in 1959 and 1960 and that they pointed out the adverse inference of "deceit" in the April 1960 letter. We believe this is inaccurate. Except for the alteration of the logs for a seven-day period to show the two-minute "Thoughts for the Day" program (as to which incident Donald Cooke was found innocent), we have not found any instance in which the Examiners characterized the evidence as deceptive or as constituting misrepresentation. It was not until the Commission's decision (15 months after the hearing) that the evidence was misconstrued so that it appeared that appellant had attempted to deceive the Commission.

The Commission attacks appellant's claim of surprise by pointing out that it did not object to the Examiners' comments on "censurable managerial immaturity and operational shortcomings." (Br. 62) It suggests that at least at that stage in the proceedings appellant must have come to the realization that enlarged issues were involved. This is another example of the Commission's unsound reasoning.

The matters which the Examiners felt warranted criticism are attributable only to lack of experience and mistakes of judgment, as well as the problems of absentee ownership, rather than to deliberate malice or intent to deceive. The Examiners' comments on immaturity and operational shortcomings cannot be equated with findings that Don was irresponsible and had neglected the station. Even more importantly, the lack of exception to the Examiners' language cannot, by any stretch of the imagination, establish that appellant knew that it was charged with a "pattern of deception."

In the final analysis, the Examiners' decision to renew the license represented a victory for appellant. It informed the Commission that during the renewal period it would prove to the Commission's satisfaction, by actual performance, that it had overcome any "immaturity or operational shortcomings" (R. 1056). Thus, its failure to object to this

language in the Initial Decision is wholly meaningless so far as notice of enlarged issues is concerned.⁶

C. Appellant Was Seriously Prejudiced by the Absence of Adequate Notice

The Commission asserts (Br. 71-72) that appellant has not shown prejudice because its additional evidence on the new issues was not adequately described. This contention is refuted by the record. The affirmative evidence which appellant is prepared to offer was clearly indicated to the Commission. For example, in the petition for reconsideration (R. 1320), counsel for KRLA, who had actively participated in formulating the February, 1960 representations to the Commission, offered to testify as to his firsthand knowledge of all the circumstances of their preparation. He indicated that he was prepared to establish that Donald Cooke properly relied on the station's staff when it furnished descriptions of programs and other information which is reflected in the response to the 309(b) letter. Appellant also asked for an opportunity to show explicitly how compelling family and personal necessity required Donald Cooke to leave the station in the care of experienced subordinates at a time which the Commission regarded as having crucial significance with respect to the new issue of neglect. (R. 1308, n. 21)

Moreover, the Commission has ignored the fact that an important aspect of a full and fair hearing is the opportunity for cross-examination.

⁶Any implication that the Examiners' comments could have served to enlarge the issues is clearly unwarranted. As the Commission recently noted, "The Hearing Examiner has no authority to enlarge the issues either directly, or indirectly by re-interpretation of the issues, and when he does so he exceeds his authority. If existing issues do not encompass matters which appear to be pertinent to the ultimate decision in a case, one or more of the interested parties should file a petition with the Commission to enlarge the issues. It is not for the Hearing Examiner to decide whether such matters should be determined." Massillon Broadcasting Co., 23 RR 915, 916, n. 1 (1962).

As this Court has pointed out, "The theory of a plaintiff's case has much to do with how defendant's counsel will cross-examine plaintiff's witnesses and, perhaps, how he will examine his own witnesses. It is too important a matter to be withheld from the adversary . . . until all the evidence is in" *Meadow Gold Products Co. v. Wright*, 108 U.S. App. D.C. 33, 278 F.2d 867, 869 (1960).

In denying the request to reopen the record for additional evidence, the Commission expressed no doubt as to the adequacy of appellant's proffer or the materiality of the evidence which it proposed to offer. Instead, its ruling was based solely upon its misguided view of timeliness in that, according to the Commission, "the decision was resolved on the basis of the hearing issues and . . . [appellant] was given ample opportunity to explore the evidence adduced with respect thereto." (R. 1549.) Thus, the Commission's present assertion that appellant did not sufficiently specify its additional evidence is obviously a makeweight supplied as an afterthought.

The Commission has labored hard but unsuccessfully to make the factual situation in the case at bar resemble that which was before the Court in *Kuhn v. Civil Aeronautics Board*.⁷ In contrast to the instant case, there was, in *Kuhn*, "no doubt that . . . petitioner had actual notice that the lookout issue was involved." Furthermore, the petitioner in *Kuhn*, unlike appellant, had ample opportunity to ask that additional evidence be taken and clearly chose not to do so. *Kuhn* stands on its own facts. The principle of *Kuhn*, when applied to the dissimilar factual situation which is here presented, demands reversal of the agency action. As this Court pointed out: "While we do not think this [*Kuhn*] case reveals a breach of the duty to give adequate notice, the agencies

⁷ 87 U.S. App. D.C. 130, 183 F.2d 839 (1950). This case is discussed in appellant's opening brief at page 30, and in the Commission's brief at pp. 59, 71, 73-74.

should scrupulously avoid even approaching the limits beyond which violations of due process lie." ⁸ The Commission in the instant case ignored this admonition. As a result, appellant was denied a full and fair hearing.

II. The Commission Has Failed in Its Attempt to Show Record Support for Its Findings of Deception and Neglect

The Commission has attempted, by persistent reiteration and extravagant characterization, to magnify the importance of the few incidents upon which it attempted to base its finding of Donald Cooke's "willingness" and "efforts" to deceive. Despite the appearance thus given of a multiplicity of unfavorable actions by Don, an analysis of the decision below discloses that the Commission actually relied upon four. These are set forth fairly and accurately on page 35 of appellant's opening brief.

The Commission refers over and over again (e.g., Br. 40, 48, 52, 54) to the 15-minute "public service" program discussed by Schulz in his memorandum to Don on October 15, 1959. It labels it as "mislogging" and "misclassification." Actually, there was not one whit of evidence — and no finding — that the Schulz concept was adopted by Don. Moreover, there is no basis in the record for an assertion that the program in the format suggested by Schulz was ever broadcast or that such a program, or indeed any 15-minute "public service" program, was misclassified in any logs kept by KRLA or in any document submitted to the Commission. ⁹

Similarly, there is nothing in the record to support the statement

⁸Ibid., p. 843.

⁹Despite the fact that the Commission's own "Counterstatement" at pages 18 and 19 does not refer to the program as having been carried or to any misclassification of any "public service" segment, the argument portion of its brief relies heavily upon this incident as a part of the so-called "pattern of deception."

(Br. 48) that Donald Cooke attempted to conceal the fact that an "agricultural" program was actually "Tips to Housewives." On the contrary, the record shows that the nature and content of the program "Best Buy of the Day" were fully disclosed to the Commission along with the fact that it was classified as agricultural.¹⁰

In its opening brief (p. 36), appellant stated that the Commission found that certain transcribed segments of "KRLA Farm Roundup" had not been broadcast on the basis of testimony by Perry Allen that he "did not recall" having broadcast those segments. The Commission challenges the accuracy of this statement. It maintains that Allen testified that the transcribed segments had not in fact been broadcast.¹¹ Whether or not the Commission's present construction of the testimony is accurate is immaterial. The important point is that Allen's testimony was found, both in the Initial Decision and the Final Decision, to be merely that "he did not recall" having broadcast any of the transcriptions. (R. 954, 1248.) The Commission cannot, for the first time in this Court, urge that the evidence would support a stronger finding than it itself made.

The Commission has improperly escalated its finding of willingness to connive on various schemes to hoodwink the Commission into a willingness to deceive; then into a disposition to deceive; then into efforts to mislead the Commission; and, finally, into a "pattern of deception."¹²

¹⁰See appellant's opening brief (pp. 36-37) and R. 352.

¹¹Br. 21, 42, 44, 45, 73, n. 27.

¹²In a recent case in which there was a willful, calculated and deliberate misrepresentation of a much more serious nature, the Commission concluded, upon consideration of the entire record, that the licensee was not disqualified. Spartan Radiocasting Co., 33 FCC 765 (1962). In the case at bar, on the other hand, the "whole record" test — the main purpose of which is to limit the opportunity for transmitting a preconception into judgment by picking and choosing what will supply that preconception and ignoring whatever weighs against it — was honored in the breach.

The Commission's position is not strengthened by its assertion (Br. 46) that, even though "one or more" of the incidents may be disregarded, there is nevertheless substantial evidentiary support for the finding of a "pattern of deception." If this Court is persuaded that some of the incidents are innocuous, the case should be remanded to the Commission to determine whether the remaining incidents are nevertheless sufficient to make out a "pattern."

The weakness of the decision below is also apparent from the rationale which the Commission used (Br. 55) in comparing Donald Cooke's responsibility for the proper operation of KRLA to the responsibility of a parent for the welfare of a child "even if he is compelled to be absent from the child for a good reason such as health." Does the Commission seriously contend that a mother who leaves her child in the care of an accredited nurse while she enters a hospital for an urgent operation is, upon her return, to be adjudged unfit to have custody of the child because the nurse failed to give the child proper care? While the Commission's analogy clearly does not buttress its decision, it does serve to reveal the emptiness of its protestation that it "did not impose upon Donald Cooke a standard of absolute liability for the misdeeds of others." (R. 1546.) That, in essence, is exactly what it has done.

III. The Commission's Brief Makes the Unwarranted Assumption That the Public Will Not Be Injured by the Loss of KRLA's Religious Programming

As appellants in Case No. 17,239 (which is consolidated with the case at bar) demonstrated in their brief (pp. 22-26),¹³ the Commission ignored the impact of the loss of KRLA's religious programming upon the public interest, convenience, and necessity. The Commission now

¹³See also, appellant's opening brief, pp. 47-50.

offers the limp excuse that the public will not be injured since its action in taking KRLA off the air "makes this frequency available to other applicants who will be able to meet the area's need for meritorious public service programming . . ." (Br. 79). This position is articulated for the first time in its brief to this Court. It is an impermissible afterthought which cannot excuse its error; it is well settled that an administrative agency's decision may not be sustained upon a rationale not contained in the decision. *Securities and Exchange Commission v. Chenery Corp.*, 318 U.S. 80, 87 (1943).

Moreover, the assumption that some other station in the Los Angeles area will make up for the loss of KRLA's public service programs is conjectural in the extreme. It is far from certain that the KRLA frequency will even be retained in the Los Angeles area, since, unlike television channels, radio frequencies are not allocated to particular communities.¹⁴ Furthermore, the Commission can point to no present station in the Los Angeles area or to any future applicant for a station which is willing and able to carry on KRLA's religious programming. On the contrary, the record shows, for example, that the only other station which had carried the High Mass to hospital patients and other shut-ins had imposed conditions which made it impossible for the appellant Immaculate Conception Church to continue that program (Tr. 84). The Commission was informed by an affidavit of Monseigneur Truxaw (R. 1405) that no other station in Southern California is in a position to furnish a religious broadcast schedule comparable to that of KRLA.¹⁵

¹⁴Section 3.21-3.28 of the Rules of the Federal Communications Commission, 47 C.F.R. 3.21-3.28.

¹⁵In the same affidavit, Monseigneur Truxaw advised the Commission that His Eminence James Francis Cardinal MacIntyre, Archbishop of Los Angeles, "has advised . . . [the Immaculate Conception Church of Los Angeles] that the continuation of this program without any interruption of broadcast service is extremely desirable and would be of great value not only to [the church], its members, but also to the listening audience numbering in the thousands." (R. 1405)

Furthermore, appellant Lake Congregational Church informed the Commission that the injury to it which would result from being deprived of KRLA's facilities would be substantial and that, even more importantly, its "listening audience which has been built up and cultivated over a period of years would be deprived of a unique and irreplaceable program service." (R. 1397)

KRLA's presently unique contribution to public service programming in populous Southern California stands unchallenged. The Commission failed to assess the importance of this programming and to evaluate alternatives. We are not asking the Court to prescribe the answer which the Commission should ultimately reach. We maintain, however, that until all public interest factors are considered by the Commission, it is not justified in forcing KRLA off the air.

CONCLUSION

The Commission's brief has not succeeded in refuting appellant's arguments which demonstrate, first, that the Commission committed a serious procedural error in deciding the case on issues not litigated; secondly, that its findings of deception and neglect by Donald Cooke lack evidentiary support; and finally, that it failed to consider important public considerations before ordering appellant out of the broadcasting business.

Respectfully submitted,

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Of Counsel

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Washington 6, D. C.

Attorneys for Appellant, Eleven Ten
Broadcasting Corporation

April 17, 1963

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,239

IMMACULATE CONCEPTION CHURCH OF LOS ANGELES

and

LAKE CONGREGATIONAL CHURCH OF PASADENA,

Appellants,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee.

No. 17,240

ELEVEN TEN BROADCASTING CORPORATION,

Appellant.

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee.

Appeal from Decision and Orders of the
Federal Communications Commission

United States Court of Appeals
for the District of Columbia Circuit

Vol. I

FILED APR 15 1963

Nathan J. Paulson
CLERK
CLERK

Pages 1-345

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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and
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FEDERAL COMMUNICATIONS COMMISSION,
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JOINT APPENDIX

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September 2, 1959

REPUBLIC 7-2566

CABLE ADDRESS
 "PIERBALL"

WESTERN UNION ADDRESS
 FAX WASH. DC.

HAROLD L. STULTS
 PATENT COUNSEL

RECEIVED

SEP 2 1959

F. C. C.
 OFFICE OF THE SECRETARY

Miss Mary Jane Morris, Secretary
 Federal Communications Commission
 Washington, D. C.

Dear Miss Morris:

Submitted herewith, each in triplicate, are applications by Eleven Ten Broadcasting Corporation for renewal of the licenses for the main and alternate main transmitters for Station KRLA (Formerly Station KXLA), Pasadena, California.

The transmitter and program logs submitted with the original copy of the main transmitter application are original logs and it is accordingly requested that they be returned to the licensee when they have served their purpose.

We are advised by the licensee that the program schedule for a proposed typical week as required by paragraph 2b of Section IV will be submitted to the Commission within the next several days.

An Ownership Report for the licensee (Form 323) is being filed simultaneously herewith.

Should there be any questions concerning these applications, please communicate with this office.

Very truly yours,

PIERSON, BALL & DOWD

Robert E. Hodson

Robert E. Hodson

Enclosures

<p>FCC Form 303 July 1964 Section I</p> <p style="text-align: center;">Form Approved Budget Bureau No. 52-RD16.12</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL COMMUNICATIONS COMMISSION</p> <p style="text-align: center;">APPLICATION FOR RENEWAL OF BROADCAST STATION LICENSE</p>	<p>File No. 11-1139</p> <p>Name and post office address of applicant (See Instruction D) Eleven-Ten Broadcasting Corporation 1401 South Oak Knoll Pasadena, California</p> <p>Send notices and communications to the following-named person at the post office address indicated: Edwin V. Schuls</p>															
<p style="text-align: center;">INSTRUCTIONS</p> <p>A. This form is to be used in all cases when applying for Renewal of Broadcast Station License. It consists of this part, Section I, and the following sections:</p> <p style="padding-left: 20px;">Section II, Renewal Application Engineering Data</p> <p style="padding-left: 20px;">Section IV, Statement of Program Service of Broadcast Station</p> <p>B. Prepare and file three copies of this form and all exhibits and appendices to one copy. File with Federal Communications Commission, Washington 25, D. C.</p> <p>C. Number exhibits serially in the space provided in the body of the form and list each exhibit in the space provided on page 2 of this Section. Date each exhibit.</p> <p>D. The name of the applicant must be stated exactly as it appears on the current license.</p> <p>E. Information called for by this application which is already on file with the Commission need not be refiled in this application provided (1) the information is now on file in another application or FCC form filed by or on behalf of this applicant; (2) the information is identified fully by reference to the file number (if any), the FCC form number, and the filing date of the application or other form containing the information and the page or paragraph referred to, and (3) after making the reference, the applicant states: "No change since date of filing." Any such reference will be considered to incorporate into this application all information, confidential or otherwise, contained in the application or other form referred to. The incorporated application or other form will thereafter, in its entirety, be open to the public.</p> <p>F. This application must be executed by applicant, if an individual; by a partner of applicant, if a partnership; by an officer of applicant, if a partnership; by an officer of applicant, if a corporation or association; or by attorney of applicant only under conditions shown in Section 1.308, Rules Relating to Practice and Procedure, in which event satisfactory evidence of disability of applicant or his absence from the Continental United States and authority of attorney to act must be submitted with application.</p> <p>G. BE SURE ALL NECESSARY INFORMATION IS FURNISHED AND ALL PARAGRAPHS ARE FULLY ANSWERED. IF ANY PORTIONS OF THE APPLICATION ARE NOT APPLICABLE, SPECIFICALLY SO STATE. DEFECTIVE OR INCOMPLETE APPLICATIONS MAY BE RETURNED WITHOUT CONSIDERATION.</p>	<p>1. Renewal requested for following existing facilities</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Call letters KXLA</td> <td style="width: 33%;">Frequency 1110</td> <td style="width: 33%;">Channel No.</td> </tr> <tr> <td colspan="2">Power in kilowatts</td> <td rowspan="2">Minimum hours operation daily</td> </tr> <tr> <td>Night 10</td> <td>Day 10</td> </tr> </table> <p>Hours of operation</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Unlimited <input checked="" type="checkbox"/></td> <td rowspan="3">Sharing with (Specify Stations)</td> <td rowspan="3">Other (Specify)</td> </tr> <tr> <td>Daytime only <input type="checkbox"/></td> </tr> <tr> <td>Limited <input type="checkbox"/></td> </tr> </table> <p>Station location</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Pasadena</td> <td>State California</td> </tr> </table> <p>2. Is applicant or any person directly or indirectly controlling applicant, party to a suit in any Federal Court involving the monopolizing, or an attempt to monopolize radio communication directly or indirectly through control of the manufacturer or sale of radio apparatus, by exclusive traffic arrangements, or by any other means, or of using unfair methods of competition? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If the answer is "Yes", attach as Exhibit No. _____ a full description of the proceeding, identifying the court and showing where records of the proceeding may be obtained. (See Section 313 of the Communications Act of 1934.)</p> <p>3. Attach as Exhibit No. 7 a detailed balance sheet of the applicant as at the close of a month within 90 days of the date of this application.</p> <p>4. Is the applicant's Ownership Report filed with this application? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> (See 1.343(a) of Commission's Rules.) If answer is "No", give date of filing of last Ownership Report and call letters, station location and file number of renewal application with which it was filed.</p> <p>5. Any change in the citizenship of the applicant? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>6. Is the applicant a representative of an alien or foreign government? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>7. List below other businesses in which the applicant or any officer, director, or principal stockholder (any person owning 25% or more of applicant's stock) has a 25% or more interest. List also any radio station other than the station which is the subject of this application in which any of the above named persons have any interest, and the nature and extent of their interest in the broadcast station.</p> <p>Donald Cooke, Inc. National Agency Representative</p>	Call letters KXLA	Frequency 1110	Channel No.	Power in kilowatts		Minimum hours operation daily	Night 10	Day 10	Unlimited <input checked="" type="checkbox"/>	Sharing with (Specify Stations)	Other (Specify)	Daytime only <input type="checkbox"/>	Limited <input type="checkbox"/>	Pasadena	State California
Call letters KXLA	Frequency 1110	Channel No.														
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Pasadena	State California															

Broadcast Application		FEDERAL COMMUNICATIONS COMMISSION		Section IV	
STATEMENT OF PROGRAM SERVICE OF BROADCAST APPLICANT		Name of applicant Eleven-Ten Broadcasting Corporation Operating KXLA Radio, Pasadena, Calif. (Soon to be)			
NOTICE TO ALL APPLICANTS (KXLA) The replies to the following questions constitute a representation of programming policy upon which the Commission will rely in considering the application. It is not expected that licensee will or can adhere inflexibly in day-to-day operation to the representation here made. However, since such representation will constitute, in part, the basis upon which the Commission acts on the application, time and care should be devoted to the preparation of the replies so that they will reflect accurately applicant's responsible judgment of his proposed programming policy.					
INSTRUCTIONS 1. Paragraphs 1 to 4 are divided into a left-hand column which pertains to past operation and a right-hand column which pertains to proposed operation. Applicants for new stations or assignees or transferees of existing stations are to fill in only the right-hand column while applicants for renewals of existing station licenses are to fill in both columns. 2. Program data on past performance are to be based on the composite week for the year preceding the date of application except in the case of renewal applications where the year preceding the expiration date of the existing license is to be used. The days comprising the composite week of each year will be designated by public notice on or about November 1st of that year. 3. Program classifications incident to the replies to Paragraphs 2, 3, and 4 below, are to be in accordance with the definitions on Page 4 of this Section. 4. Assignees or transferees filing FCC Form 314 or 315 need not complete paragraphs 5 or 8.					
PAST OPERATION			PROPOSED OPERATION (for a typical week)		
1. (a) State actual minimum weekly schedule of operation under the present authorization, giving opening and closing time and total hours for weekdays and Sunday. Sign on 5:00 a.m. Monday Sign off 12:00 Midnight, Sunday Total Hours - 163 per Week			(b) State minimum weekly schedule of operation proposed by licensee, permittee, assignee or transferee, giving opening and closing time and total hours for weekdays and Sunday. Sign on 7:00 a.m. Sunday Sign off 5:00 am. Sunday Total Hours - 166 per Week		
2. (a) State for the composite week the percentage of time which was devoted to each of the following types of programs (totals to equal 100%). (Under former ownership)			(b) State the percentage of time to be devoted to each of the following types of programs for a proposed typical week of operation under the authorization requested (totals to equal 100%). Attach program schedule for this proposed typical week and indicate thereon the class of each program in accordance with paragraph 4(b). (Under present ownership;		
(1) Entertainment (include here all programs which are intended primarily as entertainment, such as music, drama, variety, comedy, quiz, breakfast, children's, etc.)			(1) Entertainment (include here all programs which are intended primarily as entertainment, such as music, drama, variety, comedy, quiz, breakfast, children's, etc.)		
88.04 %			88.10 %		
(2) Religious (include here all sermons, religious news, music, and drama, etc.)			(2) Religious (include here all sermons, religious news, music, and drama, etc.)		
4.60 %			1.90 %		
(3) Agricultural (include here all programs containing farm or market reports or other information specifically addressed to the agricultural population)			(3) Agricultural (include here all programs containing farm or market reports or other information specifically addressed to the agricultural population) * See Ex. 1 a		
-0- %			.65 %		
(4) Educational (include here programs prepared by or in behalf of educational organizations, exclusive of discussion programs which should be classified under (6) below)			(4) Educational (include here programs prepared by or in behalf of educational organizations, exclusive of discussion programs which should be classified under (6) below)		
-0- %			.75 %		
(5) News (include here news reports and commentaries)			(5) News (include here news reports and commentaries)		
6.13 %			7.78 %		
(6) Discussion (include here forum, panel and round-table programs)			(6) Discussion (include here forum, panel and round-table programs)		
.31 %			.75 %		
(7) Talks (include here all conversation programs which do not fall under Points (2), (3), (4), (5), or (6) above, including sports)			(7) Talks (include here all conversation programs which do not fall under Points (2), (3), (4), (5), or (6) above, including sports)		
.92 %			- %		
(8) - %			*See Ex. 1 b - %		
(9) - %			(9) - %		
(10) Miscellaneous			(10) Miscellaneous		
100.00 %			*See Ex. 1 b 99.93 %		

Broadcast Application	STATEMENT OF PROGRAM SERVICE	Section IV, Page 2																																																																																																																																																																
<p>3. (a) Dividing the broadcast week into 15 minute periods, specify below the number of 15 minute periods within such 15 minute periods during the composite week in which were broadcast (exclusive of non-commercial spot announcements, call letter announcements and promotional announcements for sustaining programs):</p> <table style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th></th> <th style="text-align: center;">No. of 15 minute periods</th> </tr> </thead> <tbody> <tr><td>(1) No spot announcements or commercial continuity</td><td style="text-align: center;">104</td></tr> <tr><td>(2) One spot announcement</td><td style="text-align: center;">11</td></tr> <tr><td>(3) Two spot announcements</td><td style="text-align: center;">19</td></tr> <tr><td>(4) Three spot announcements</td><td style="text-align: center;">13</td></tr> <tr><td>(5) Four spot announcements</td><td style="text-align: center;">13</td></tr> <tr><td>(6) Five or more spot announcements</td><td style="text-align: center;">0</td></tr> <tr><td colspan="2" style="text-align: center;">(Does not reflect commercial shows)</td></tr> <tr><td>Total number of 15 minute periods</td><td style="text-align: center;">652</td></tr> </tbody> </table> <p>State the number of spot announcements (exclusive of non-commercial spot and call letter announcements, and promotional announcements for sustaining programs) broadcast during the composite week which exceeded one minute in length <u>0</u> (See definition of spot announcement)</p>		No. of 15 minute periods	(1) No spot announcements or commercial continuity	104	(2) One spot announcement	11	(3) Two spot announcements	19	(4) Three spot announcements	13	(5) Four spot announcements	13	(6) Five or more spot announcements	0	(Does not reflect commercial shows)		Total number of 15 minute periods	652	<p>(b) State what the practice of the station will be with respect to the number and length of spot announcements allowed in a given period.</p> <p>KRLA will not schedule spot announcements in excess of 60 seconds in length. Nor will any 15 minute segment have more than 5 spot announcements scheduled on a participating basis.</p> <p>On all time sales, the NAB code will be adhered to throughout the broadcast day.</p>																																																																																																																																															
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<p>4. In the tables below the percentages for each segment are to be computed on the basis of 100 percent of the operating hours within the particular segment for the seven days comprising the composite week (i.e., if full time operation, 70 hours for the 6 a.m. to 6 p.m. segment, 35 hours for the 6 p.m. to 11 p.m. segment, and the total weekly hours of operation between 11 p.m. and 6 a.m. for the third segment). The percentages in the column headed "Total" are to be computed on the basis of 100 percent of operating hours for the seven days.</p> <p>The exact number of spot announcements should be stated, including those broadcast within participating programs, but excluding call letter announcements (call letters and location) and promotional announcements for sustaining programs.</p> <p>NOTE: The purpose of the following tabulation is to enable the Commission to secure quantitative data as to the proportion of time (to be) devoted to the various classes of programs. The function of each class of program as part of a diversified program structure is discussed in the Commission's Report of March 7, 1946, entitled "Public Service Responsibility of Broadcast Licensees".</p>																																																																																																																																																																		
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5. (a) Attach as Exhibit No. <u>II</u> the original or one exact copy of the program log for the seven days comprising the composite week analyzed in the preceding paragraphs. (If original logs are submitted they will be returned.)	8. If this application is for an FM authorization, will the programs of any AM station operating in the same area be duplicated? If the answer is yes, <u>N/A</u>	Yes <input type="checkbox"/> No <input type="checkbox"/>																			
(b) What year's composite week has been analyzed in the foregoing paragraphs? <u>November, 1957 - Sept. 1958</u>	(a) How many hours per day will be devoted to duplicated programs? <u>N/A</u>																				
6. Will the proposed station be affiliated with any network? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If the answer is "Yes", give the name of the network.	(b) Call letters and location of the AM station <u>N/A</u>																				
7. Attach as Exhibit No. <u>III</u> a narrative statement on the policy to be pursued with respect to making time available for the discussion of public issues, including illustrations of the types of programs to be broadcast and the methods of selection of subjects and participants. <u>See Exhibit #III</u>	(c) What kinds of programs (musical, sports, etc.) will be duplicated? <u>N/A</u>																				
	9. State the average number of hours per week which will be used in advertising or promoting any business, profession or activity other than broadcasting in which the applicant is engaged or financially interested either directly or indirectly. If this is an application for renewal of license, show this data for the past license period also. <u>N/A</u>																				
	10. If the data furnished in response to the questions in this Section IV do not in the applicant's opinion adequately reflect station operation, attach as Exhibit No. <u>IV</u> a statement setting forth any additional program data that the applicant desires to call to the Commission's attention. (If the applicant feels that the program material classified in Paragraph 2 is susceptible of classifications other than those listed he may supplement Paragraph 2 with an explanatory statement in this Exhibit.)																				
11. If this application is for a television authorization, will programs be broadcast in color? If "Yes", will programs be: Network <input type="checkbox"/> Local Live <input type="checkbox"/> Local Slide <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> <u>N/A</u>																				
12. State applicant's general plans for staffing the station, including the number of employees in each department (i.e. program, commercial, technical, etc.), and the names, residence and citizenship of the general manager, station manager, program director and other department heads who have been employed or whom the applicant expects to employ.																					
<p>General Manager - Edwin V. Schulz, Hollywood, Calif., U.S. Citizen Program Manager - William J. Wheatley, Pasadena, Calif., U.S. Citizen Chief Engineer - Jack Reeder, Pasadena, California, U.S. Citizen Commercial Department - 4 Salesmen under General Manager Program Department:</p> <table border="0"> <tr> <td>1. Program Manager</td> <td>Administrative Department:</td> </tr> <tr> <td>1. Program Secretary</td> <td>7 employees including General Manager.</td> </tr> <tr> <td>2. Continuity Personnel</td> <td></td> </tr> <tr> <td>7 Air personalities</td> <td></td> </tr> <tr> <td>3 Air Newsmen</td> <td></td> </tr> <tr> <td>1 Music Librarian</td> <td></td> </tr> <tr> <td>1 Traffic Director</td> <td></td> </tr> </table> <p style="text-align: center;"><u>16</u></p> <p>Engineering:</p> <table border="0"> <tr> <td>1 Chief Engineer</td> </tr> <tr> <td>1 Studio Supervisor</td> </tr> <tr> <td>4 Studio Engineers</td> </tr> <tr> <td>4 Transmitter Engineers</td> </tr> </table>				1. Program Manager	Administrative Department:	1. Program Secretary	7 employees including General Manager.	2. Continuity Personnel		7 Air personalities		3 Air Newsmen		1 Music Librarian		1 Traffic Director		1 Chief Engineer	1 Studio Supervisor	4 Studio Engineers	4 Transmitter Engineers
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[Rec'd. September 2, 1959]

ELEVEN-TEN BROADCASTING CORPORATION - KXLA

EXHIBIT I

- A. Twice daily on KXLA(9 to be redesignated KRLA) newscasts will be devoted primarily to agricultural news, such as specific weather information of interest to farm areas, market reports, grain futures, etc. These will be broadcast at 6:00 a.m. and again at 12:00 noon. In the event of an Act of God, such as flood, tornado, earthquake, drouth, all time necessary will be devoted to the dissemination of agricultural news.
- B. Throughout the broadcast day, KXLA (KRLA) will present short sports stories and scores as they are edited by the newsroom. These sports inserts will become program content on RC, RS, LC, and LS categories, and are entered under the Entertainment section of Paragraph 2(b), Section IV of this application.

EXHIBIT II

Original logs from KXLA, of the following dates:

Monday, January 20, 1958
Tuesday, March 18, 1958
Wednesday, April 9, 1958
Thursday, May 15, 1958
Friday, July 25, 1958
Saturday, September 13, 1958
Sunday, November 17, 1957

Since these program logs were all performed under past ownership, they do not reflect present ownership's compliance with FCC Rules and Regulations regarding the coding used. As best it possible to determine, FCC terms and instructions have been followed in preparing the composite week study. Present program logs will be kept in strict compliance with the FCC outline for same.

EXHIBIT III

A special series, to be prepared expressly for use on KXLA (KRLA) will be presented nightly. The series, titled "Town Hall" will air both sides of current questions. If only one side of a controversial issue desires to be heard, then KXLA's news analysts and management will investigate thoroughly and present the unrepresented side. At present, no straightforward editorials are planned, but KXLA will exercise its right to editorialize, stating facts, possible solutions to community problems, and outlining steps, pro or con, the audience can and should take to resolve these problems.

In addition to the "Town Hall" series, KXLA (KRLA) will utilize frequent 60 second messages by civic and military leaders, either their voices or their voices dramatized or their words quoted, to work for the welfare of our community, state and nation. These same 60 second messages will perhaps be used to outline briefly some civic problem, suggest possible solutions, and encourage action by listeners, either pro or con.

The general needs of the listeners will be the criteria in selection of subjects for discussion, and the principal persons involved will be requested to present their side or send suitable representation.

[10]

EXHIBIT IV

It should be so stated that KXLA (KRLA) will at all times, operate in the public interest, with issues of vital importance taking precedence over commercial gain. The applicant will remain flexible to serve the needs of the community, progressing with the community, and seeking out ways of helping the community by spreading knowledge.

[55]

8

[55]

[Rec'd. September 30, 1959]

PIERSON, BALL & DOWD

* * *

ATTORNEYS AT LAW

* * *

Ring Building
Washington 6, D.C.

September 30, 1959

Miss Mary Jane Morris, Secretary
Federal Communications Commission
Washington 25, D.C.

In re: Eleven Ten Broadcasting Company, Application For
Renewal of License of Station KRLA, Pasadena, California

Dear Miss Morris:

Please find enclosed herewith an amendment to the above-entitled application. At the time the application for renewal of license was submitted, program percentage analyses were submitted in response to paragraphs 2(b) and 4(b) of Section IV. These analyses were prepared by the then program director of the station but were not accompanied by a copy of the program schedule upon which they were purportedly based. When a request was made of the station for the necessary supporting documents, the station was not able to locate the schedule which had been used by the individual who prepared the analyses and who was no longer employed by the station. It was, therefore, necessary for the station to take their present program schedule, which they propose to maintain during the forthcoming license period, and prepare a new percentage analysis upon the basis of this program schedule. It is apparent from the results of this analysis that either the original analyses were not based upon the station's current operating program schedule or that there were mathematical errors made in the computation. The attached amendment is based upon an accurate percentage analysis of the station's existing program schedule.

Miss Mary Jane Morris

September 30, 1959

If there are any questions in regard to this matter, please communicate directly with the undersigned.

Very truly yours,
Pierson, Ball & Dowd
/s/ Thomas N. Dowd

Enclosure

[56]

[Rec'd. September 30, 1959]

AMENDMENT

The application of Eleven Ten Broadcasting Corporation, filed with the Commission on September 2, 1959, for renewal of the license for the main transmitter of KRLA (formerly Station KXLA), Pasadena, California, is hereby amended to substitute the attached revised answers to paragraphs 2(b) and 4(b) of Section IV for the present answers to these paragraphs; to incorporate the attached typical program schedule as an exhibit in response to paragraph 2(b) of Section IV; and to substitute the attached revised Exhibit No. III (prepared by Edwin V. Schulz, Assistant Secretary) for present Exhibit No. III.

Eleven Ten Broadcasting Corporation
/s/ Donald Cooke
President

[JURAT dated September 29, 1959]

Broadcast Application		FEDERAL COMMUNICATIONS COMMISSION		Section IV
STATEMENT OF FIDELITY SERVICE OF LICENSEE APPLICANT		Name of applicant Eleven Ten Broadcasting Corporation		
<p>NOTE TO ALL APPLICANTS</p> <p>The replies to the following questions constitute a representation of programming policy upon which the Commission will rely in considering the application. It is not expected that licensees will or can adhere inflexibly in every particular to the representation here made. However, since such representation will constitute, in part, the basis upon which the Commission acts on the application, time and care should be devoted to the preparation of the replies so that they will reflect accurately applicant's responsible judgment of his proposed programming policy.</p>				
<p>INSTRUCTIONS</p> <p>1. Paragraphs 1 to 4 are divided into a left-hand column which pertains to past operation and a right-hand column which pertains to proposed operation. Applicants for new stations or assignments or transfers of existing stations are to fill in only the right-hand column while applicants for renewals of existing station licenses are to fill in both columns.</p> <p>2. Program data on past performance are to be based on the composite week for the year preceding the date of application except in the case of renewal applications where the year preceding the expiration date of the existing license is to be used. The days comprising the composite week of each year will be designated by public notice on or about November 15th of that year.</p> <p>3. Program classifications incident to the replies to Paragraphs 2, 3, and 4 below, are to be in accordance with the definitions on Page 4 of this Section.</p> <p>4. Assignees or transferees filing FCC Form 324 or 325 need not complete paragraphs 5 or 6.</p>				
PAST OPERATION		PROPOSED OPERATION (for a typical week)		
<p>1. (a) State actual minimum weekly schedule of operation under the present authorization, giving opening and closing time and total hours for weekdays and Sunday.</p>		<p>(b) State minimum weekly schedule of operation proposed by licensee, permittee, assignee or transferee, giving opening and closing time and total hours for weekdays and Sunday.</p>		
<p>2. (a) State for the composite week the percentage of time which was devoted to each of the following types of programs (totals to equal 100%).</p>		<p>(b) State the percentage of time to be devoted to each of the following types of program for a proposed typical week of operation under the authorization requested (totals to equal 100%). Attach program schedule for this proposed typical week and indicate thereon the class of each program in accordance with paragraph 4(b). See attached program schedule</p>		
<p>(1) Entertainment (include here all programs which are intended primarily as entertainment, such as music, drama, variety, comedy, quiz, breakfast, children's, etc.)</p>		<p>(1) Entertainment (include here all programs which are intended primarily as entertainment, such as music, drama, variety, comedy, quiz, breakfast, children's, etc.)</p>		
<p>(2) Religious (include here all sermons, religious news, music, and drama, etc.)</p>		<p>(2) Religious (include here all sermons, religious news, music, and drama, etc.)</p>		
<p>(3) Agricultural (include here all programs containing farm or market reports or other information specifically addressed to the agricultural population)</p>		<p>(3) Agricultural (include here all programs containing farm or market reports or other information specifically addressed to the agricultural population)</p>		
<p>(4) Educational (include here programs prepared by or in behalf of educational organizations, exclusive of discussion programs which should be classified under (6) below)</p>		<p>(4) Educational (include here programs prepared by or in behalf of educational organizations, exclusive of discussion programs which should be classified under (6) below)</p>		
<p>(5) News (include here news reports and commentaries)</p>		<p>(5) News (include here news reports and commentaries)</p>		
<p>(6) Discussion (include here forum, panel and round-table programs)</p>		<p>(6) Discussion (include here forum, panel and round-table programs)</p>		
<p>(7) Talks (include here all conversation programs which do not fall under Points (2), (3), (4), (5), or (6) above, including sports)</p>		<p>(7) Talks (include here all conversation programs which do not fall under Points (2), (3), (4), (5), or (6) above, including sports)</p>		
<p>(8)</p>		<p>(8) Public Service</p>		
<p>(9)</p>		<p>(9)</p>		
<p>(10) Miscellaneous</p>		<p>(10) Miscellaneous</p>		
100		100		

Broadcast Application	STATEMENT OF PROGRAM SERVICE	Section IV, Page 2																																																																																																																																																														
<p>3. (a) Dividing the broadcast week into 15 minute periods, specify below the number of 14 1/2 minute periods within such 15 minute periods during the composite week in which were broadcast (exclusive of non-commercial spot announcements, call letter announcements and promotional announcements for sustaining programs):</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;"></th> <th style="width: 20%; text-align: center;">No. of 14 1/2 minute periods</th> </tr> </thead> <tbody> <tr><td>(1) No spot announcements or commercial continuity</td><td style="text-align: center;">.....</td></tr> <tr><td>(2) One spot announcement</td><td style="text-align: center;">.....</td></tr> <tr><td>(3) Two spot announcements</td><td style="text-align: center;">.....</td></tr> <tr><td>(4) Three spot announcements</td><td style="text-align: center;">.....</td></tr> <tr><td>(5) Four spot announcements</td><td style="text-align: center;">.....</td></tr> <tr><td>(6) Five or more spot announcements</td><td style="text-align: center;">.....</td></tr> </tbody> </table> <p style="text-align: center;">Total number of 14 1/2 minute periods</p> <p>State the number of spot announcements (exclusive of non-commercial spot and call letter announcements, and promotional announcements for sustaining programs) broadcast during the composite week which exceeded one minute in length</p> <p>(See definition of spot announcement)</p>		No. of 14 1/2 minute periods	(1) No spot announcements or commercial continuity	(2) One spot announcement	(3) Two spot announcements	(4) Three spot announcements	(5) Four spot announcements	(6) Five or more spot announcements	<p>(b) State what the practice of the station will be with respect to the number and length of spot announcements allowed in a given period.</p>																																																																																																																																																	
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<p>4. In the tables below the percentages for each segment are to be computed on the basis of 100 percent of the operating hours within the particular segment for the seven days comprising the composite week (i.e., if full time operation, 70 hours for the 8 a.m. to 6 p.m. segment, 35 hours for the 6 p.m. to 11 p.m. segment, and the total weekly hours of operation between 11 p.m., and 8 a.m. for the third segment). The percentages in the column headed "Total" are to be computed on the basis of 100 percent of operating hours for the seven days.</p> <p>The exact number of spot announcements should be stated, including those broadcast within participating programs, but excluding call letter announcements (call letters and location) and promotional announcements for sustaining programs.</p> <p>NOTE: The purpose of the following tabulation is to enable the Commission to secure quantitative data as to the proportion of time (to be) devoted to the various classes of programs. The function of each class of program as part of a diversified program structure is discussed in the Commission's Report of March 7, 1946, entitled "Public Service Responsibility of Broadcast Licensees".</p>																																																																																																																																																																
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[59]

[Rec'd. September 30, 1959]

ELEVEN-TEN BROADCASTING CORPORATION September 15, 1959
KRLA Radio
Pasadena, California

PROPOSED TYPICAL PROGRAM SCHEDULE

Monday thru Saturday

AM

5:50	Inspirational Message	Rel.	RS
5:55	News and Farm Report	N. -Agr.	WS
6:00-9:00	THE PERRY ALLEN SHOW	Ent	RC
	Including:		
	Crime Beat(1 in 3-hour segment, 2:30)	PS	LS
6:15	Sports Line	Talk	LS
6:30	MidHour Headlines	News	WS
6:45	Weather Eye	Talk	LS
6:55	News	News	WC
7:15	Sports Line	Talk	LC
7:30	MidHour Headlines	News	WC
7:45	Weather Eye	Talk	LC
7:55	News	News	WC
8:15	Sports Line	Talk	LC
8:30	MidHour Headlines	News	WC
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9:00-12:00			
Noon	THE ROY ELWELL SHOW	Ent	RC
	Including:		
	Crime Beat (1 in 3-hour segment, 2:30)	PS	LS
9:15	Sports Line	Talk	LC
9:30	MidHour Headlines	News	WC

9:00-12:00

Noon

THE ROY ELWELL SHOW (Cont'd)

Ent

RC

9:45

Weather Eye

Talk

LC

9:55

News

News

WC

[60]

10:15

Sports Line

Talk

LC

10:30

MidHour Headlines

News

WC

10:40

Housewives Buy of the Day

Agr.

LS

10:45

Weather Eye

Talk

LC

10:55

News

News

WC

11:15

Sports Line

Talk

LC

11:30

MidHour Headlines

News

WC

11:45

Weather Eye

Talk

LC

11:55

News and Market Report

N. -Agr.

WC

12:00 Noon-3:00 PM

THE BOB COLE SHOW

Ent

RC

Including:

Crime Beat (1 in 3-hour segment, 2:30)

PS

LS

12:15

Sports Line

Talk

LC

12:30

MidHour Headlines

News

WC

12:45

Weather Eye

Talk

LC

12:55

News

News

WC

1:15

Sports Line

Talk

LC

1:30

MidHour Headlines

News

WC

1:45

Weather Eye

Talk

LC

1:55

News

News

WC

2:15

Sports Line

Talk

LC

2:30

MidHour Headlines

News

WC

2:40

Housewives Buy of the Day

Agr.

LS

2:45

Weather Eye

Talk

LC

2:55

News

News

WC

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3:00-6:00 PM

THE JIMMY O'NEILL SHOW

Ent

RC

Including:

Crime Beat (1 in 3-hour segment, 2:30)

PS

LS

3:15 Sports Line

Talk

LC

3:30 MidHour Headlines

News

WC

3:45 Weather Eye

Talk

LC

3:55 News and Market Report

N. -Agr.

WC

4:15 Sports Line

Talk

LC

4:30 MidHour Headlines

News

WC

4:45 Weather Eye

Talk

LC

4:55 News

News

WC

5:15 Sports Line

Talk

LC

5:30 MidHour Headlines

News

WC

5:45 Weather Eye

Talk

LC

5:55 News

News

WC

6:00-9:00 PM

THE TOM MCKENNA SHOW

Ent

RC

Including:

Crime Beat (1 in 3-hour segment, 2:30)

PS

LS

6:15 Sports Line

Talk

LC

6:30 MidHour Headlines

News

WC

6:45 Weather Eye

Talk

LC

6:55 News

News

WC

7:15 Sports Line

Talk

LC

7:30 MidHour Headlines

News

WC

7:45 Weather Eye

Talk

LC

7:55 News

News

WC

[62]

8:15 Sports Line

Talk

LC

6:00-9:00 PM

	THE TOM MCKENNA SHOW (Cont'd)	Ent	RC
8:30	MidHour Headlines	News	WC
8:45	Weather Eye	Talk	LC
8:55	News	News	WC

9:00-12:00 MIDNIGHT

	THE FROSTY HARRIS SHOW	Ent	RC
	Including:		
	Crime Beat (1 in 3-hour segment, 2:30)	PS	LS
9:15	Sports Line	Talk	LC
9:30	MidHour Headlines	News	WC
9:45	Weather Eye	Talk	LC
9:55	News	News	WC
10:15	Sports Line	Talk	LS
10:30	MidHour Headlines	News	WS
10:45	Community Clndr (3 min.)	PS	LS
10:55	News	News	WS
11:15	Sports Line	Talk	LS
11:30	MidHour Headlines	News	WS
11:45	Weather Eye	Talk	LS
11:55	News	News	WS

12:00 MIDNIGHT-6:00 AM

	THE FRANK POLLACK SHOW	Ent	RC
	Including:		
	Crime Beat (1 in 3-hour segment, 2:30)	PS	LS
12:15	Sports Line	Talk	LS
12:30	MidHour Headlines	News	WS
12:45	Weather Eye	Talk	LS
12:55	News	News	WS

1:15	Sports Line	Talk	LS
1:30	MidHour Headlines	News	WS

12:00 MIDNIGHT-6:00 AM

THE FRANK POLLACK SHOW (Cont'd)		Ent	RC
1:45	Weather Eye	Talk	LS
1:55	News	News	WS
2:15	Sports Line	Talk	LS
2:30	MidHour Headlines	News	WS
2:45	Weather Eye	Talk	LS
2:55	News	News	WS
3:15	Sports Line	Talk	LS
3:30	MidHour Headlines	News	WS
3:45	Weather Eye	Talk	LS
3:55	News	News	WS
4:15	Sports Line	Talk	LS
4:30	MidHour Headlines	News	WS
4:45	Weather Eye	Talk	LS
4:55	News and Farm Report	N. -Agr.	WS
5:15	Sports Line	Talk	LS
5:30	MidHour Headlines	News	WS
5:45	Weather Eye	Talk	LS

PROPOSED TYPICAL PROGRAM SCHEDULE

Sunday

AM

5:50	Inspirational Message	Rel.	RS
5:55	News and Farm Report	N. -Agr.	WS

6:00-9:00 AM

THE PERRY ALLEN SHOW		Ent	RC
Including:			
Crime Beat (1 in 3-hour segment, 2:30)		PS	LS
6:15	Sports Line	Talk	LS
6:30	MidHour Headlines	News	WS

6:00-9:00 AM

THE PERRY ALLEN SHOW (Cont'd)		Ent	RC
6:35	Religious Program	Rel.	LS
6:55	News	News	WS
7:15	Sports Line	Talk	LS
7:25	Report on Education	Ed.	LS
7:30	MidHour Headlines	News	WS
7:45	Weather Eye	Talk	LS
7:55	News	News	WC
8:15	Sports Line	Talk	LSWX
8:30	MidHour Headlines	News	WC
8:45	Weather Eye	Talk	LS
8:50	Sunday Traffic Report	PS	LS
8:55	News	News	WC

9:00-12:00 NOON

THE ROY ELWELL SHOW		Ent	RC
Including:			
Crime Beat (1 in 3-hour segment, 2:30)		PS	LS
9:15	Sports Line	Talk	LC
9:30	MidHour Headlines	News	WC
9:35	Religious Program	Rel.	LS

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9:55	News	News	WC
10:15	Sports Line	Talk	LC
10:20	Sunday Traffic Report	PS	LS
10:25	Report on Education	Ed.	LS
10:30	MidHour Headlines	News	WC
10:45	Weather Eye	Talk	LC
10:55	News	News	WC
11:15	Sports Line	Talk	LC
11:30	MidHour Headlines	News	WC

9:00-12:00 NOON

	THE ROY ELWELL SHOW (Cont'd)	Ent	RC
11:45	Weather Eye	Talk	LC
11:55	News	News	WC

12:00 NOON-3:00 PM

	THE BOB COLE SHOW	Ent	RC
Including:			
	Crime Beat (1 in 3-hour segment, 2:30)	PS	LS
12:15	Sports Line	Talk	LC
12:30	MidHour Headlines	News	WC
12:45	Weather Eye	Talk	LC
12:55	News	News	WC
1:15	Sports Line	Talk	LC
1:25	Report on Education	Ed.	LS
1:30	MidHour Headlines	News	WC
1:35	Religious Program	Rel.	LS
1:55	News	News	WC
2:15	Sports Line	Talk	LC
2:30	MidHour Headlines	News	WC
2:45	Weather Eye	Talk	LC
2:55	News	News	WC

3:00-6:00 PM

	THE JIMMY O'NEILL SHOW	Ent	RC
Including:			
	Crime Beat (1 in 3-Hour segment, 2:30)	PS	LS
3:15	Sports Line	Talk	LS
3:30	MidHour Headlines	News	WC
3:45	Weather Eye	Talk	LC
3:50	Sunday Traffic Report	PS	LS
3:55	News	News	WC

3:00-6:00 PM

	THE JIMMY O'NEILL SHOW (Cont'd)	Ent	RC
4:15	Sports Line	Talk	LC
4:30	MidHour Headlines	News	WC
4:45	Weather Eye	Talk	LC
4:50	Sunday Traffic Report	PS	LS
4:55	News	News	WC
5:15	Sports Line	Talk	LC
5:30	MidHour Headlines	News	WC
5:45	Weather Eye	Talk	LC
5:50	Sunday Traffic Report	PS	LS
5:55	News	News	WC

6:00-9:00 PM

	THE TOM MCKENNA SHOW	Ent	RC
	Including:		
	Crime Beat (1 in 3-hour segment, 2:30)	PS	LS
6:15	Sports Line	Talk	LC
6:30	MidHour Headlines	News	WC
6:45	Weather Eye	Talk	LC
6:50	Sunday Traffic Report	PS	LS
6:55	News	News	WC
7:15	Sports Line	Talk	LC
7:30	MidHour Headlines	News	WC

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7:45	Weather Eye	Talk	LC
7:50	Sunday Traffic Report	PS	LS
7:55	News	News	WC
8:15	Sports Line	Talk	LC
8:20	Report on Education	Ed.	LS
8:30	MidHour Headlines	News	WC
8:45	Weather Eye	Talk	LC
8:55	News	News	WC

9:00-12:00 MIDNIGHT

THE FROSTY HARRIS SHOW

Ent

RC

Including:

Crime Beat (1 in 3-hour segment, 2:30)		PS	LS
9:15	Sports Line	Talk	LS
9:30	MidHour Headlines	News	WS
9:45	Weather Eye	Talk	LS
9:55	News	News	WS
10:15	Sports Line	Talk	LS
10:30	MidHour Headlines	News	WS
10:45	Community Clndr (3 min.)	PS	LS
10:55	News	News	WS
11:15	Sports Line	Talk	LS
11:30	MidHour Headlines	News	WS
11:35	Religious Program	Rel.	LS
11:55	News	News	WS

12:00 MIDNIGHT-6:00 AM

THE FRANK POLLACK SHOW

Ent

RC

Including:

Crime Beat (1 in 3 hour segment, 2:30)		PS	LS
12:15	Sports Line	Talk	LS
12:30	MidHour Headlines	News	WS

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12:45	Weather Eye	Talk	LS
12:55	News	News	WS
1:15	Sports Line	Talk	LS
1:25	Report on Education	Ed.	LS
1:30	MidHour Headlines	News	WS
1:45	Weather Eye	Talk	LS

12:00 MIDNIGHT-6:00 AM

THE FRANK POLLACK SHOW (Cont'd)		Ent	RC
1:55	News	News	WS
2:15	Sports Line	Talk	LS
2:30	MidHour Headlines	News	WS
2:35	Religious Program	Rel.	LS
2:55	News	News	WS
3:15	Sports Line	Talk	LS
3:30	MidHour Headlines	News	WS
3:45	Weather Eye	Talk	LS
3:55	News and Farm Report	N. -Agr.	WS
4:15	Sports Line	Talk	LS
4:30	MidHour Headlines	News	WS
4:45	Weather Eye	Talk	LS
4:55	News and Farm Report	N. -Agr.	WS
5:15	Sports Line	Talk	LS
5:30	MidHour Headlines	News	WS
5:45	Weather Eye	Talk	LS

(:15 Sports Line - 2:30')
 (:30 MidHour Headlines - 2:30')
 (:45 Weather Eye - 2:30')
 (:55 News - 5:00')
 (:35 Religious Programs - 5:00')

[69]

[Rec'd. September 30, 1959]

REVISED EXHIBIT III

ELEVEN-TEN BROADCASTING CORPORATION September 2, 1959
KRLA Radio
Pasadena, California

The applicant proposes to schedule on KRLA Radio, Pasadena, California, a program schedule of popular music with hourly five-minute newscasts, sportscasts, midhour headlines summaries, and complete weather summaries and forecasts within each hour. Our programming, emphasizing music, news, sports, weather and service information will be produced in a manner to appeal to the largest possible audience in the station's service area.

The applicant proposes to conduct regular monthly surveys of listenership in an attempt to determine the changing tastes in programming. KRLA will keep abreast of these changes by programming accordingly.

MUSIC: Recorded and transcribed music will constitute in the main the musical programming of KRLA. KRLA will maintain a balance and depth in its musical programming, presenting both the current popular hits, as determined by an accurate survey of record sales in Southern California, and the top recorded hits of the past years. Records will be chosen and selected by the KRLA Music Department in order to maintain our balanced music policy.

NEWS: KRLA will concentrate on news coverage of local and regional importance, utilizing a staff of four trained news reporters and newscasters. The staff will cover local and regional on-the-spot news, and will re-write and edit national and international news. KRLA proposes to use the full leased wire facilities of the major news services, plus a full sports wire service, and the

wire service of the Los Angeles City News Service. In addition, KRLA news staffers will have the facilities of mobile news unit cars, for on-the-spot coverage of spot news. The applicant proposes to render a factual and up-to-the-minute news coverage of Southern California to our listeners.

RELIGION: KRLA will not carry or schedule commercially sponsored religious programs. Our program schedule will carry daily religious inspirational messages and on Sundays, we propose to carry a special religious service over the air on a public service basis, rotating different denominations each week, thus giving all creeds an opportunity to communicate with our listeners.

[70]

AGRICULTURE: KRLA serves an important farm area. With this in mind, KRLA will schedule frequent agricultural reports within its early morning and late afternoon newscasts. These reports will take the form of market reports on livestock and commodities. In addition, KRLA will schedule special reports to housewives concerning the best buys of the week in meats, poultry, and produce, every day.

EDUCATION: KRLA will offer to educators, scientists, and professional men frequent opportunities to present short talks of an educational nature. We will provide these speakers with the talents of our program personnel to assist them in presenting provocative and informative talks. In addition, the applicant will co-operate fully with the California State Teachers Association, the Los Angeles County School system, and the many institutions of higher learning in the area to promote and foster a high level of public interest in the problems of education.

COMMUNITY SERVICE: Throughout KRLA's broadcast day, frequent mention of community activities of a civic, cultural or

social nature will be broadcast to our listeners. The station will not only offer its time to such community enterprises, but will write, develop and broadcast information on community activities which it believes will be of general interest to the public.

PUBLIC SERVICE: KRLA proposes to serve the convenience, necessity and interest of the public through a continuing program of public service announcements designed to inform, promote, and maintain public interest in the fields of public health, education, civic defense, national defense, and mental health.

[71]

Broadcast License Div.

October 28, 1959

AIR MAIL

Eleven Ten Broadcasting Corporation
Radio Station KRLA
1401 S. Oak Knoll Avenue
Pasadena, California

Attention: Edwin V. Schulz

Gentlemen:

This is with reference to your application for renewal of license of Station KRLA, Pasadena, California (File No. BR-1189).

The Commission is unable to determine the nature of the programming operations of Station KRLA under your ownership inasmuch as you have submitted an analysis in Section IV of your renewal application which was based upon the 1957-58 composite week dates (at which times the station was being operated by its former owners). You were notified in the Commission's letter accompanying the sets of renewal application forms previously sent to you that if the station was not in operation by you as the current licensee during the assigned composite week dates, you should furnish an analysis of the station's logs for the seven

Attention: Edwin V. Schulz

October 28, 1959

consecutive days preceding the date of the application. In order that proper consideration may be given to your application, it is requested that you submit, in the form of an amendment, a revised program analysis (Section IV) for the dates October 18 through 24, 1959, inclusive.

You are also requested to submit the logs for said dates with your amendment. It is requested that this information be filed not later than November 4, 1959.

Your particular attention is called to paragraph 9 of Section IV which you failed to answer in your initial renewal application.

Information has been brought to the attention of the Commission which indicates that in September, 1959, a "give-away" promotion was conducted by KRLA in which \$10,000 was offered to the first person to find its new disc jockey, Perry Allen. Each day that Allen was not found, the amount of the prize was to diminish. The Commission has been informed that on the second day of the contest, KRLA aired the following announcement:

"Go out on the streets of Los Angeles today. Take a hint: go to a Los Angeles restaurant, look for a guy in a bow tie and say 'KRLA 1110 L.A.' And if you say this to me, the newest member of KRLA's ever lovin' 1110 men, Perry Allen, you'll be richer by \$9,000 in cash. So go."

[72]

It appears that at the time of these announcements Perry Allen was still in the employ of a radio station in Buffalo, New York, and that this fact was known to the management of a Los Angeles station which sent a man from Minneapolis to Buffalo to "find" Perry Allen and demand the prize. It further appears that Allen was so "found" in Buffalo, but KRLA refused to award the prize.

Attention: Edwin V. Schulz

October 28, 1959

The above circumstances raise a substantial question as to whether the promotion was a bona fide contest or whether the promotion in reality constituted a use of the broadcast facilities of KRLA for an improper purpose inimical to the public interest. You are requested to supply the Commission with full details concerning the above incident.

The information submitted as a response to this letter should be filed in triplicate, in the form of an amendment to the renewal application, properly subscribed and verified in accordance with the provisions of Section 1.303 of the Commission's Rules. Your immediate attention to these matters is requested in order that your application for renewal of license may be regularly processed prior to the expiration date of your license.

Very truly yours,

/s/ Mary Jane Morris
Secretary

cc: Donald R. Cooke
Pierson, Ball & Dowd

Signed by above; Mailed by
October 28, 1959

[73]

[Rec'd. November 12, 1959]

PIERSON, BALL & DOWD

* * *

ATTORNEYS AT LAW

* * *

Ring Building

Washington 6, D.C.

November 12, 1959

Miss Mary Jane Morris, Secretary
Federal Communications Commission
Washington, D.C.

Dear Miss Morris:

Submitted herewith, in triplicate, pursuant to the Commission's letter dated October 28, 1959 (Reference No. 8419), addressed to Eleven Ten Broadcasting Corporation, Pasadena, California, is an amendment to the application of Station KRLA for renewal of license (File No. BR-1189), together with a letter from the station to the Commission dated November 10, 1959 with reference to a particular promotion carried by the station, also in response to the Commission's letter of October 28, 1959.

While the Commission's October 28, 1959 letter requested that the information called for by said letter be filed not later than November 4, 1959, it is understood that informal staff approval has been given to the later filing of the information due to the fact that the Commission's letter was not dated and mailed until October 28.

Should there be any questions concerning the attachments, please communicate with this office.

Very truly yours.

Pierson, Ball & Dowd

/s/ Robert E. Hodson

Enclosures

[74]

[Rec'd. November 12, 1959]

ELEVEN TEN BROADCASTING CORPORATION
KRLA Radio

November 10, 1959

REF: 8419

Miss Mary Jane Morris, Secretary
Federal Communications Commission
Washington 25, D.C.

Dear Miss Morris:

This letter is in reply to that portion of the Commission's letter of October 28, 1959, in which the Commission questions the circumstances surrounding a promotional contest run on KRLA, entitled the "Find Perry Allen Contest."

KRLA Radio began its new programming service on Thursday, September 3, 1959. In late August, KRLA hired Perry Allen, a well-known Buffalo radio personality, as a new staff announcer. At the time Allen was hired by KRLA, he was employed by WKBW Radio in Buffalo, New York. We made arrangements to have Allen come immediately to Los Angeles, and it was our expectation that he would be able to wind up his affairs in Buffalo, and report for work at KRLA within 48 hours from the start of our new programming service on September 3.

In order to promote Allen's arrival in Los Angeles and the start of his new program on KRLA Radio, we began a "Find Perry Allen" contest on KRLA Radio the afternoon of September 3. It was our intention to bring Allen across the country, making occasional stops en route, and have Allen make beeper telephone reports as to the progress of his trip across the country, at the same time giving "clues" as to his whereabouts, and clues as to the time and place of his arrival in Los Angeles.

In kicking off this promotion we offered a \$10,000.00 prize to the KRLA listener who could find and properly identify Perry Allen. As more specific clues were given, and as the contest progressed,

Miss Mary Jane Morris, Secretary

November 10, 1959

the \$10,000.00 cash prize would decrease in value to a minimum of \$5,000.00. The plans for the promotion of this contest, specifically provided for definite clues, and for the payment of the prize to the first KRLA listener who found and identified Allen.

On the morning of Friday, September 4, when the "Find Perry Allen" contest was less than 24 hours old, and when the prize offered was still \$10,000.00, a Mr. Charles Arlington, who identified himself as a resident of Burbank, California, and a KRLA listener, found and properly identified Perry Allen in the studios of WKBW Radio in Buffalo where Allen was winding up his show, preparatory to leaving for Los Angeles and KRLA.

[75]

Mr. Arlington telephoned KRLA Radio from Buffalo and told us that he was from Burbank, that he had figured out where Perry Allen was and that he had flown to Buffalo to find Allen and claim the \$10,000.00 prize. We congratulated Mr. Arlington and asked him to return immediately to Los Angeles with Perry Allen so that we could present the \$10,000.00 prize to him and fully publicize the award presentation. This Mr. Arlington refused to do. He agreed to contact us again after he had some "rest." We never heard from Arlington again. Since the primary reason for this contest was publicity, the discovery of Allen in Buffalo and the subsequent trip would have served the purpose well.

Upon investigation, we learned that Mr. Arlington is an employee of the Crowell-Collier Publishing Company, owner and licensee of KFWB Radio in Los Angeles. We learned further that Arlington, for some time prior to the incident, had been working in Minneapolis-St. Paul for Radio Station WISK, a newly acquired radio property of Crowell-Collier. We learned that Arlington had not been in Southern California nor, indeed, anywhere near the KRLA coverage area on September 3 or 4, and that, in fact, Arlington had received instructions from KFWB, Los Angeles to go to Buffalo from Minneapolis in order to find Perry Allen.

Miss Mary Jane Morris, Secretary

November 10, 1959

These circumstances indicated that Arlington was acting as an agent on behalf of another party who might have a superior claim on the prize money. We, therefore, turned the entire matter of determining the bona fide winner of the contest over to our attorneys with the request that they determine in the shortest possible time, the person, if any, entitled to the \$10,000.00 cash prize.

Upon proper determination of the bona fide winner of the "Perry Allen Contest," it was our express intention to pay the \$10,000.00 prize as offered on the air over KRLA on September 3 and 4. At no time during this period did the management of KRLA refuse to pay the prize. Because of the circumstances of the case, we merely wanted an authoritative opinion on who was the bona fide winner, if any.

Our attorneys, after completely investigating all the facts, determined that the bona fide winner of the "Perry Allen Contest" was in fact, Mr. Robert M. Purcell, President and General Manager of KFWB Radio, Los Angeles. When this determination was made, we immediately contacted Mr. Purcell to make arrangements to present him with the prize. We subsequently made arrangements to pay Mr. Purcell the \$10,000.00 at a time convenient to him.

The presentation of the \$10,000.00 prize was made to Mr. Purcell in the offices of the Eisaman-Johns Advertising Agency at 10:00 A.M. on Friday, October 23, 1959. At this time, pictures of the presentation were taken, and appropriate news releases were made to the press.

We must state categorically that the "Find Perry Allen" contest on KRLA Radio was a legitimate, bona fide radio promotion contest produced on the air to publicize the Perry Allen Show on KRLA Radio to listeners in our coverage area. KRLA had every intention of paying the proper prize to the

bona fide winner of the contest regardless of the amount of money involved. At no time did KRLA refuse to pay the prize to the legally

Miss Mary Jane Morris, Secretary

November 10, 1959

determined winner of the contest. Our good faith in this matter is certainly borne out by the fact that the declared winner of the contest was and is the president and general manager of a competing radio station, and that we did, in fact, pay the \$10,000.00 prize to Mr. Purcell.

In regard to the paragraph in the Commission's letter concerning an announcement promoting the contest which implied that Perry Allen was in Los Angeles when, in fact, he was still in Buffalo, this ad lib statement went beyond the fact sheet used in the contest, a copy of which fact sheet is attached hereto. The management of KRLA takes full responsibility for all announcements made over its facilities, but it does not believe that this ad lib statement can be or should be held indicative of any intent on the part of KRLA Radio to use its facilities for a purpose inimical to the public interest. It had been the intention of the station to broadcast specific clues as to Allen's whereabouts, but the contest did not last long enough to make this possible. Admittedly, only a person knowledgeable in the industry could have located Allen upon the basis of his name (which was well known) and such other information as might have been gained from the first announcement, and the prize at this point was commensurated with the degree of knowledge required.

We respectfully submit that it is our desire to operate KRLA Radio to provide a programming service of the highest possible standards as prescribed by the rules and regulations of the Federal Communications Commission. We further submit that the foregoing details regarding the "Perry Allen Contest" are the true facts in this matter to the best of our knowledge and belief.

Very truly yours,

KRLA Radio
(ELEVEN TEN BROADCASTING CORPORATION)

/s/ Edwin V. Schulz
General Manager

[JURAT dated November 10, 1959]

KRLA RADIO
PROGRAM MEMOMEMO TO: ALL DISC JOCKEYS

Plug the "Find Perry Allen Contest" once an hour till further notice.
Use the following copy points as a guide on the over-all promotion. Clue sheets are in the book:

1. KRLA will award \$10,000.00 to the first person who can find and properly identify Perry Allen.
2. Perry Allen must be identified with the phrase "Perry Allen - Radio Eleven Ten."
3. Listen every hour for the day's clue on Radio Eleven-Ten.
4. Don't forget - Perry Allen may be anywhere. He's on his way to KRLA. Find Perry Allen and win \$10,000.00 ever-lovin' cash dollars from your ever-lovin' Eleven-Ten Men.

[78]

[Rec'd Nov. 12, 1959-FCC]

AMENDMENT

The application of Eleven Ten Broadcasting Corporation for renewal of license of Station KRLA (formerly KXLA), Pasadena, California, File Number BR-1189, is hereby amended to substitute the attached Section IV and its incorporated Exhibits 1 through 4 in lieu of the Section IV and associated exhibits now on file.

ELEVEN TEN BROADCASTING
CORPORATION

By /s/ Edwin V. Schulz
Assistant Secretary

[JURAT the 12th day of Nov., 1959].

Broadcast Application		FEDERAL COMMUNICATIONS COMMISSION		Section IV	
STATEMENT OF PROGRAM SERVICE OF BROADCAST APPLICANT		Name of applicant ELEVEN TEN BROADCASTING CORPORATION			
NOTICE TO ALL APPLICANTS The replies to the following questions constitute a representation of programming policy upon which the Commission will rely in considering the application. It is not expected that licensee will or can adhere inflexibly in day-to-day operation to the representation here made. However, since such representation will constitute, in part, the basis upon which the Commission acts on the application, time and care should be devoted to the preparation of the replies so that they will reflect accurately applicant's responsible judgment of his proposed programming policy.					
INSTRUCTIONS 1. Paragraphs 1 to 4 are divided into a left-hand column which pertains to past operation and a right-hand column which pertains to proposed operation. Applicants for new stations or assignees or transferees of existing stations are to fill in only the right-hand column while applicants for authorizations for renewal of existing station licenses are to fill in both columns. 2. Program data on past performance are to be based on the composite week for the year preceding the date of application except in the case of renewal applications where the year preceding the expiration date of the existing license is to be used. The days comprising the composite week of each year will be designated by public notice on or about November 15th of that year. 3. Program classifications incident to the replies to Paragraphs 2, 3, and 4 below, are to be in accordance with the definitions on Page 4 of this Section. 4. Assignees or transferees filing FCC Form 314 or 315 need not complete paragraphs 5 or 8.					
PAST OPERATION			PROPOSED OPERATION (for a typical week)		
1. (a) State actual minimum weekly schedule of operation under the present authorization, giving opening and closing time and total hours for weekdays and Sunday. Sign On - 5 A.M. Monday PST Sign Off - 12 Midnight Sunday PST Total Hours - Tuesday thru Sunday - 144 hrs. Total Hours - Mondays Only - 19 hrs. Total Hours per week - 163 hrs.			(b) State minimum weekly schedule of operation proposed by licensee, permittee, assignee or transferee giving opening and closing time and total hours for weekdays and Sunday. No change		
2. (a) State for the composite week the percentage of time which was devoted to each of the following types of programs (totals to equal 100%).			(b) State the percentage of time to be devoted to each of the following types of programs for a proposed typical week of operation under the authorization requested (totals to equal 100%). Attach program schedule for this proposed typical week and indicate thereon the class of each program in accordance with paragraph 4(b). See Exhibit No. 3		
(1) Entertainment (include here all programs which are intended primarily as entertainment, such as music, drama, variety, comedy, quiz, breakfast, children's, etc.)	57.25 %		(1) Entertainment (include here all programs which are intended primarily as entertainment, such as music, drama, variety, comedy, quiz, breakfast, children's, etc.)	85.39 %	
(2) Religious (include here all sermons, religious news, music, and drama, etc.) See Ex. No. 2	0.16 %		(2) Religious (include here all sermons, religious news, music, and drama, etc.)	1.17 %	
(3) Agricultural (include here all programs containing farm or market reports or other information specifically addressed to the agricultural population)	0.69 %		(3) Agricultural (include here all programs containing farm or market reports or other information specifically addressed to the agricultural population)	1.32 %	
(4) Educational (include here programs prepared by or in behalf of educational organizations, exclusive of discussion programs which should be classified under (6) below) See Ex. No. 2	0.00 %		(4) Educational (include here programs prepared by or in behalf of educational organizations, exclusive of discussion programs which should be classified under (6) below)	0.11 %	
(5) News (include here news reports and commentaries)	0.20 %		(5) News (include here news reports and commentaries)	7.91 %	
(6) Discussion (include here forum, panel and round-table programs) See Ex. No. 2	0.00 %		(6) Discussion (include here forum, panel and round-table programs)	0.22 %	
(7) Talks (include here all conversation programs which do not fall under Points (2), (3), (4), (5), or (6) above, including sports)	3.70 %		(7) Talks (include here all conversation programs which do not fall under Points (2), (3), (4), (5), or (6) above, including sports)	3.88 %	
(8)			(8)		
(9)			(9)		
(10) Miscellaneous			(10) Miscellaneous		
	100			100	

Broadcast Application	STATEMENT OF PROGRAM SERVICE	Section IV, Page 2																																																																																																																																																																										
<p>3. (a) Dividing the broadcast week into 15 minute periods, specify below the number of 14 1/2 minute periods within such 15 minute periods during the composite week in which were broadcast (exclusive of non-commercial spot announcements, call letter announcements and promotional announcements for sustaining programs):</p> <table style="margin-left: auto; margin-right: auto;"> <tr> <th></th> <th style="text-align: center;">No. of 14 1/2 minute periods</th> </tr> <tr> <td>(1) No spot announcements or commercial continuity</td> <td style="text-align: center;">93</td> </tr> <tr> <td>(2) One spot announcement</td> <td style="text-align: center;">175</td> </tr> <tr> <td>(3) Two spot announcements</td> <td style="text-align: center;">132</td> </tr> <tr> <td>(4) Three spot announcements</td> <td style="text-align: center;">56</td> </tr> <tr> <td>(5) Four spot announcements</td> <td style="text-align: center;">23</td> </tr> <tr> <td>(6) Five or more spot announcements</td> <td style="text-align: center;">2</td> </tr> <tr> <td> Total number of 14 1/2 minute periods</td> <td style="text-align: center;"> 481</td> </tr> </table> <p>State the number of spot announcements (exclusive of non-commercial spot and call letter announcements, and promotional announcements for sustaining programs) broadcast during the composite week which exceeded one minute in length <u>none</u> (See definition of spot announcement)</p>		No. of 14 1/2 minute periods	(1) No spot announcements or commercial continuity	93	(2) One spot announcement	175	(3) Two spot announcements	132	(4) Three spot announcements	56	(5) Four spot announcements	23	(6) Five or more spot announcements	2	 Total number of 14 1/2 minute periods	 481	<p>(b) State what the practice of the station will be with respect to the number and length of spot announcements allowed in a given period.</p> <p><u>MAXIMUM COMMERCIAL COPY LENGTHS:</u></p> <p>One Minute (60") ET - 150 Words Live Half Minute (30") ET - 75 Words Live ID (10") ET - 25 Words Live</p> <p>No commercial spot announcements will exceed one minute in length.</p> <p>KRLA will not schedule in excess of a total of five minutes of participating commercial spot announcements within any 14-1/2 minute segment.</p>																																																																																																																																																											
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<p>4. In the tables below the percentages for each segment are to be computed on the basis of 100 percent of the operating hours within the particular segment for the seven days comprising the composite week (i.e., if full time operation, 70 hours for the 8 a.m. to 6 p.m. segment, 35 hours for the 6 p.m. to 11 p.m. segment, and the total weekly hours of operation between 11 p.m., and 8 a.m. for the third segment). The percentages in the column headed "Total" are to be computed on the basis of 100 percent of operating hours for the seven days.</p> <p>The exact number of spot announcements should be stated, including those broadcast within participating programs, but excluding call letter announcements (call letters and location) and promotional announcements for sustaining programs.</p> <p>NOTE: The purpose of the following tabulation is to enable the Commission to secure quantitative data as to the proportion of time (to be) devoted to the various classes of programs. The function of each class of program as part of a diversified program structure is discussed in the Commission's Report of March 7, 1946, entitled "Public Service Responsibility of Broadcast Licensees".</p>																																																																																																																																																																												
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Broadcast Application	STATEMENT OF PROGRAM SERVICE	Section IV, Page 3																																																																				
<p>5. (a) Attach as Exhibit No. <u>1</u> the original or one exact copy of the program log for the seven days comprising the composite week analyzed in the preceding paragraphs. (If original logs are submitted they will be returned.)</p> <p>(b) What year's composite week has been analyzed in the foregoing paragraphs? <u>October 18-24, 1959 inclusive</u></p>	<p>8. If this application is for an FM authorization, will the programs of any AM station operating in the same area be duplicated? If the answer is yes, <u>Not applicable</u></p> <p>(a) How many hours per day will be devoted to duplicated programs? <u>Not applicable</u></p> <p>(b) Call letters and location of the AM station</p> <p style="text-align: center;"><u>Not applicable</u></p>																																																																					
<p>6. Will the proposed station be affiliated with any network? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If the answer is "Yes", give the name of the network.</p>	<p>(c) What kinds of programs (musical, sports, etc.) will be duplicated?</p> <p style="text-align: center;"><u>Not applicable</u></p>																																																																					
<p>7. Attach as Exhibit No. <u>2</u> a narrative statement on the policy to be pursued with respect to making time available for the discussion of public issues, including illustrations of the types of programs to be broadcast and the methods of selection of subjects and participants.</p>	<p>9. State the average number of hours per week which will be used in advertising or promoting any business, profession or activity other than broadcasting in which the applicant is engaged or financially interested either directly or indirectly. If this is an application for renewal of license, show this data for the past license period also.</p> <p style="text-align: center;">Renewal Period - <u>NONE</u> Past Period - <u>NONE</u></p> <p>10. If the data furnished in response to the questions in this Section IV do not in the applicant's opinion adequately reflect station operation, attach as Exhibit No. <u>2</u> a statement setting forth any additional program data that the applicant desires to call to the Commission's attention. (If the applicant feels that the program material classified in Paragraph 2 is susceptible of classifications other than those listed he may supplement Paragraph 2 with an explanatory statement in this Exhibit.)</p>																																																																					
<p>11. If this application is for a television authorization, will programs be broadcast in color? Yes <input type="checkbox"/> No <input type="checkbox"/> If "Yes", will programs be: Network <input type="checkbox"/> Local Live <input type="checkbox"/> Local Slide <input type="checkbox"/> <u>Not applicable</u></p>																																																																						
<p>12. State applicant's general plans for staffing the station, including the number of employees in each department (i.e. program, commercial, technical, etc.), and the names, residence and citizenship of the general manager, station manager, program director and other department heads who have been employed or whom the applicant expects to employ.</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 30%;">General Manager</td> <td style="width: 40%;">- Edwin V. Schulz, 1272 N. Flores-Los Angeles 46.</td> <td style="width: 30%;">U.S. Citizen</td> </tr> <tr> <td>Production Director</td> <td>- Herbert Heiman, 835 S. Marengo - Pasadena.</td> <td>U.S. Citizen</td> </tr> <tr> <td>Chief Engineer</td> <td>- Jack Reeder, 3561 Mountain View-Pasadena.</td> <td>U.S. Citizen</td> </tr> <tr> <td>Comptroller</td> <td>- Donald Fry, 2471 Grivey Ave.-Anaheim.</td> <td>U.S. Citizen</td> </tr> </table> <p><u>S T A F F :</u></p> <table style="width: 100%; border: none;"> <tr> <td colspan="2"><u>Administrative Department:</u></td> <td colspan="2"><u>Programming Department:</u></td> </tr> <tr> <td>General Manager</td> <td>- 1</td> <td>Production Director</td> <td>- 1</td> </tr> <tr> <td>Secretary</td> <td>- 1</td> <td>Secy/Receptionist</td> <td>- 1</td> </tr> <tr> <td>Comptroller</td> <td>- 1</td> <td>Traffic Manager</td> <td>- 1</td> </tr> <tr> <td>Bookkeeper</td> <td>- 1</td> <td>Continuity Director</td> <td>- 1</td> </tr> <tr> <td>Salesmen</td> <td>- 5</td> <td>News Director</td> <td>- 1</td> </tr> <tr> <td style="text-align: right;">Total</td> <td><u>9</u></td> <td>Newscasters</td> <td>- 3</td> </tr> <tr> <td></td> <td></td> <td>Air Personalities</td> <td>- 7</td> </tr> <tr> <td></td> <td></td> <td>Music Librarian</td> <td>- 1</td> </tr> <tr> <td></td> <td></td> <td style="text-align: right;">Total</td> <td><u>16</u></td> </tr> </table> <table style="width: 100%; border: none;"> <tr> <td colspan="2"><u>Engineering Department:</u></td> <td colspan="2" rowspan="5" style="text-align: center; vertical-align: middle;"> TOTAL PERSONNEL 35 People </td> </tr> <tr> <td>Chief Engineer</td> <td>- 1</td> </tr> <tr> <td>Studio Supervisor</td> <td>- 1</td> </tr> <tr> <td>Studio Engineers</td> <td>- 4</td> </tr> <tr> <td>Xntr. Engineers</td> <td>- 4</td> </tr> <tr> <td style="text-align: right;">Total</td> <td><u>10</u></td> <td colspan="2"></td> </tr> </table>			General Manager	- Edwin V. Schulz, 1272 N. Flores-Los Angeles 46.	U.S. Citizen	Production Director	- Herbert Heiman, 835 S. Marengo - Pasadena.	U.S. Citizen	Chief Engineer	- Jack Reeder, 3561 Mountain View-Pasadena.	U.S. Citizen	Comptroller	- Donald Fry, 2471 Grivey Ave.-Anaheim.	U.S. Citizen	<u>Administrative Department:</u>		<u>Programming Department:</u>		General Manager	- 1	Production Director	- 1	Secretary	- 1	Secy/Receptionist	- 1	Comptroller	- 1	Traffic Manager	- 1	Bookkeeper	- 1	Continuity Director	- 1	Salesmen	- 5	News Director	- 1	Total	<u>9</u>	Newscasters	- 3			Air Personalities	- 7			Music Librarian	- 1			Total	<u>16</u>	<u>Engineering Department:</u>		TOTAL PERSONNEL 35 People		Chief Engineer	- 1	Studio Supervisor	- 1	Studio Engineers	- 4	Xntr. Engineers	- 4	Total	<u>10</u>		
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[Rec'd Nov. 12, 1959-FCC]

[82]

EXHIBIT NO. 1

The program logs for Station KRLA for the week October 18-24, 1959, inclusive, are attached to the original copy of this amendment.

[85]

<u>Sunday, October 18, 1959</u>				<u>KRLA Pasadena, California</u>		
Time On	Time Off	Program and Sponsor	Length	Type	Conti- nuity	Anncr
5:55:30	5:59:55	News and Farm Report	4'30"	RM	<i>Frank [Perry L. Pollack Allen] off at 6 AM</i>	
6:00:00	6:00:05	Stn ID By Travel Service		CP-T		
		<i>J.C.</i> The Perry Allen Show [Transcribed]		RM		
		1.				
		2.				
	6:03	3. More Music Promo ✓		NCSA		"
		4.				
	6:07	5. Y-Teens		PS	L	"
		6.				
	6:11	7. Telephone Promo ✓		NCSA	Tape 1, Tag	"
6:14:00	6:14:23	Stn ID ✓				
6:14:30	6:15:30	SPORTS LINE [Live] <i>" 1/2 Spotlite "</i> <i>Frankie Lalne #1</i> <i>- 45 SECS.</i>			<i>* 6 line note 45 secs</i>	
	6:18	1. Auto Show ✓	:20	NCSA	L	"
		2.				
	6:18:50	3. Courtesy Chev. Salute ✓	:10	NCSA	L	"
		4.				
	6:21	5. Broadcasters Assn. ✓		PS	L	"
		6.				
	6:25	7. D.J. Cross Plug ✓		NCSA		"
6:29:00	6:29:24	Stn ID <i>"less than a minute with Bobby Dickell" - 45</i>				"
6:29:30	6:30:15	Mid Hour Headlines (Live) <i>J.C.</i>	45"			"
	6:34	1. Contest (Top 3) ✓		NCSA		"
		2.				
	6:37	3. Secret Name -SUE JAMES ✓		NCSA		"
		4.				
	6:41	5. Boys Rep. ✓		PS	L	"
		6.				
		7. Word for the Day	2'	Rel	L	"

Time On	Time Off	Program and Sponsor	Length	Type	Continuity	Annncr.
6:44:00	6:44:15	Stn ID Jingle				[Perry Allen]
6:44:30		<i>J.C.</i> Weather Scope	1'			
	6:47	1. M.D.		PS	ET 2, Cut 1	"
		2.				
	6:51	3. Auto Show	:20	NCSA	L	"
	6:54	4. News Tip Promo		NCSA		"
6:55:30	6:59:55	News - Oscar Maples Ford <i>"moderately live from Los Angeles"</i>	4'30"	CP-T		"
7:00:00	7:00:05	Stn ID [Live] <i>J.C.</i>				
		The Perry Allen Show [Transcribed] <i>J.C.</i>		RM		
	7:03	1. Contest (Top 3)		NCSA		"
		2.				
	7:07	3. Y-Teens		PS	L	"
		4.				
	7:11	5. Telephone Promo		NCSA	Tape 1, Tag	"
		6.				
	7:12	7. D.J. Cross Plug		NCSA		"
7:14:00	7:14:20	Stn ID <i>"with Johnny's the Hurricane"</i>			1 min	"
7:14:30	7:15:30	Sports Line [Live] <i>J.C.</i>	1'			"
	7:18	1. Secret Name -SUE JAMES		NCSA		"
		2.				
	7:21	3. M.D.		PS	L	"
		4.				
		5.				
	7:26	6. Record Shop Promo		NCSA		"
		7.				
7:29:00	7:29:15	Stn ID				

NCSA Non-Commercial Spot Annet.
 CSA Commercial Spot Annet.
 PS Public Service
 Stn ID Station Identification
 - KRLA, Pasadena, Calif.-
 RM Recorded Music
 WS Wire Sustaining
 WC Wire Commercial
 T Talk
 Agri Agricultural
 ED Educational
 Rel Religious
 Pol Political

Monday, October 19, 1959

/ KRLA
Pasadena, California

EXHIBIT # I

Time On	Time Off	Sponsor and Program	Length	Type	Continuity	Anncr.
AM						
5:00:00	5:00:30	S I G N O N				[Perry Allen]
		<u>The Perry Allen Show</u>		RM		"
		1.				
	5:03	2. Seaboard Salute	:10	NCSA	L	"
		3.				
	5:07	4. Boys Rep.		PS	L	"
		5.				
	5:11	6. Telephone Promo		NCSA	Tape 1, Tag	"
		7.				
5:14:00	5:14:20	Stn ID				"
5:14:30	5:15	SPORTS LINE	1'			"
	5:18	1. Contest (Top 3)		NCSA		"
		2.				
		3.				
	5:21	4. M.D.		PS	L	"
		5.				
		6.				
	5:24	7. More Music Promo		NCSA		"
5:29:00	5:29:21	Stn ID				"
5:29:30	5:30:15	MID HOUR HEADLINES	45"			"
	5:33	1. Secret Name - JACKIE HOPKINS		NCSA		"
		2.				
	5:37	3. News Tip Promo		NCSA		"
		4.				
	5:41	5. Broadcasters Assn.		PS	L	"
		6.				
		7.				

Time On	Time Off	Sponsor and Program	Length	Type	Continuity	Annncr.
5:44:00	5:44:19	Stn ID Jingle				[Perry Allen]
5:44:30 AM	5:45:20	WEATHER SCOPE	1'			
	5:48	1. M.D.		PS	ET 1, Cut 1	"
		2.				"
	5:51	3. D.J. Cross Plug		NCSA		"
		4.				"
	5:53	5. Record Shop Promo		NCSA		"
		6.				
		7.				
[97]						
5:55:30	5:59:55	News and Farm Report	4'30"			"
6:00:00	6:00:05	Stn ID				"
		<u>The Perry Allen Show</u>		RM		"
	6:03	1. Cromwell Salute	:10	NCSA ✓	L	"
		2.				"
	6:04	3. Boys Rep.		PS	L	"
		4.				"
	6:07	5. D.J. Cross Plug		NCSA ✓		"
		6.				"
	6:11	7. Telephone Promo		NCSA	Tape 1, Tag	"
6:14:00	6:14	Stn ID				"
6:14:30	6:15:30	SPORTS LINE	1'			"
	6:18	✓ 1. Ford Trucks (M.G.)	:60	CSA	ET-2	"
		2.				"
	6:21	3. Broadcasters Assn.		PS	L	"
		4.				"
	6:24	5. Secret Name-JACKIE HOPKINS		NCSA		"
	6:24:50	6. More Music Promo		NCSA		"
	6:27	7. Auto Show	:20	NCSA	L	"
6:29:00	6:29:19	Stn ID				"
6:29:30	6:30:15	MID HOUR HEADLINES	45"			"
	6:35	1. Kinney Salute	:10	NCSA	L, ET 4	"
		2.				"
	6:37	3. News Tip Promo		NCSA		"
	6:38	4. Contest (Top 3)		NCSA		"
		5.				"
	6:41	✓ 6. Courtesy Chev.	:60	CSA	Tape 1, L #1	"
		7. Word for the Day	2'	Rel	L	"

Time On	Time Off	Program and Sponsor	Length	Type	Continuity	Annncr.
AM						
6:44:00	6:44:21	Stn ID Jingle	1'			[Perry Allen]
6:44:30	6:45:30	WEATHER SCOPE				
	6:48	✓ 1. Sign of the Gladiator	:30	CSA	ET [& Tag] J.C.	"
		2.				"
	6:51	3. Y-Teens		PS	L	"
	6:53	4. Auto Show	:20	NCSA	L	"
6:55:30	6:59:55	✓ NEWS COLGATE	4'30"	CP-T	ET, PC-26	"
7:00:00	7:00:05	Stn ID Sponsor				"
		<u>The Perry Allen Show</u>		RM		"
	7:03:15	1. Contest (Top 3)		NCSA		"
		2.				"
	7:06:45	3. Secret Name-JACKIE HOPKINS		NCSA		"
		4.				"
	7:11	5. D.J. Cross Plug		NCSA ✓		"
		6.				"
	7:11:45	7. M.D.		PS	L	"
						"
7:14:00	7:14:15	Stn ID	1'			"
7:14:30	7:15:30	SPORTS LINE				"
	7:18	1. Kinney Salute	:10	NCSA ✓	L, ET 5	"
		2.				"
	7:19	✓ 3. Rainier Ale	:30	CSA	ET-5	"
		4.				"
	7:22	✓ 5. Courtesy Chev.	:60	CSA	Tape 2, L Tag 2	"
		6.				"
	7:26:10	7. Telephone Promo		NCSA	Tape 1, Tag	"
7:29:00	7:29:18	Stn ID				

[98]

7:29:30	7:31:15	✓ MID HOUR HEADLINES CROMWELL	1'45"	CP-T	ET	"
	7:33	✓ 1. Sign of the Gladiator	:30	CSA	ET [& Tag] J.C.	"
		2.				"
	7:37	✓ 3. Seaboard Finance	:60	CSA	ET 1, Tag 1	"
		4.				"
	7:39	5. Auto Show	:20	NCSA ✓	L	"
		6.				"
	7:40	7. More Music Promo		NCSA		"
	7:41	✓ 8. Ford Trucks (M.G.)	:60	CSA	ET-1	"

Time On	Time Off	Sponsor and Program	Length	Type	Continuity	Annncr.
AM						[Perry Allen]
7:40:30	7:43:10	WEATHER SCOPE	1'			"
7:44:00	7:44:21	Stn ID Jingle				"
7:44:30	7:45:30	CRIME BEAT	1'			"
	7:48	✓ 1. Kinney Shoes	:60	CSA	ET 1, L #1, Tag 1	"
		2.				"
	7:51	3. D.J. Cross Plug		NCSA ✓		"
		4.				"
7: :30	7:59:55	NEWS C O L G A T E Sponsor	4'30"	CP-T	ET CDC- 364	"
8:00:00	8:00:05	Stn ID				
		<u>The Perry Allen Show</u>		RM		
	8:03	✓ 1. Ford Dealers	:30	CSA	L #1	"
		2.				"
	8:07	✓ 3. Schlitz	:60	CSA	ET A- Cut 1	"
		4.				"
	8:11	5. Telephone Promo		NCSA	Tape 1, Tag	"
		6.				"
	8:13:45	7. Auto Show	:20	NCSA ✓	L	"
8:14:00	8:14:28	Stn ID				"
8:14:30	8:15:30	SPORTS LINE	1'			"
	8:18	1. Seaboard Salute	:10	NCSA	L	"
		2.				"
	8:18:45	3. D.J. Cross Plug		NCSA ✓		"
		4.				"
	8:21	5. Kinney Salute	:10	NCSA ✓	L, #T 6	"
		6.				"
	8:25	7. News Tip Promo		NCSA		"
8:29:00	8:29:20	Stn ID				"
8:29:30	8:31:15	✓ MID HOUR HEADLINES LFD CHEV.	1'45"	CP-T	L	"
	8:34	1. Auto Show	:20	NCSA ✓	L	"
		2.				"
	8:37	3. Broadcasters Assn.		PS	L	"
		4.				"
	8:37:30	5. Secret Name-JACKIE HOPKINS		NCSA		"
		6.				"
	8:41	7. Contest (Top 3)		NCSA		"

Time On	Time Off	Sponsor and Program	Length	Type	Continuity	Annncr.
AM						[Perry Allen]
8:44:00	8:44:15	Stn ID Jingle				"
8:44:30	8:45:30	WEATHER SCOPE	1'			"
	8:48	1. Auto Show	:20	NCSA	L	"
	8:49	2. Boys Rep.		PS	L	"
	8:52	3. More Music Promo		NCSA		"
	8:53:45	4. Ford Trucks (M.G.)	:60	CSA	ET-2	"
8:55:30	8:59:55	NEWS	4' 30"			"
9:00:00		Stn ID				"

[99]

9:00:00	9:00:00	<u>THE ROY ELWELL SHOW</u>		RM		[Roy Ewell]
	9:04:00	1. The Loretta Young Way	:60	NCSA	L #1	"
		2.				
	9:07:30	3. More Music Promo		NCSA		"
		4.				
	9:10:00	5. Auto Show	:20	NCSA	L	"
		6.				
		7. [9:13 Chessman Bulletin]				
9:14:00	9:14:15	Stn ID				"
9:14:30	9:15:00	SPORTS LINE	1'			"
	9:18:30	1. Kinney Salute	:10	NCSA	L, ET 4	"
		2.				
	9:22:50	3. Seaboard Finance	:60	CSA	ET 2, Tag 2	"
		4.				
	9:23:30	5. Contest (Top 3)		NCSA		"
		6.				
	9:27:10	7. Sign of the Gladiator Salute	:10	NCSA	L	"
9:29:00	9:30:00	Stn ID				"
9:29:30	9:30:30	MID HOUR HEADLINES	45"			"
	9:34:00	1. Kinney Shoes	:60	CSA	ET 4, L #2 - Tag 2	"
		2.				
	9:38:30	3. D. J. Cross Plug		NCSA		"
		4.				
		5.				
	9:38:25	6. Secret Name-JACKIE HOPKINS		NCSA		"
		7.				

Time On	Time Off	Sponsor and Program	Length	Type	Continuity	Annncr.
AM						[Roy Elwell]
9:44:00	9:44:30	Stn ID Jingle				"
9:44:30	9:45:00	WEATHER SCOPE	1'			"
	9:47:50	1. Courtesy Salute	:10	NCSA	L	"
		2.				"
	9:48:30	3. Broadcasters Assn.		PS	L	"
9:50	9:51:30	4. Telephone Promo		NCSA	Tape 1, Tag	"
9:55:00	9:55:30	NEWS	4'30"			"
10:00:00		Stn ID				"
		<u>THE ROY ELWELL SHOW</u>		RM		"
	10:04:05	1. Mortgage Refinance	:60	CSA	L #1	"
		2.				"
	10:11:30	3. M.D.		PS	L	"
		4.				"
		5.				"
	10:07:10	6. D.J. Cross Plug		NCSA		"
		7.				"
10:14:00	10:14:00	Stn ID				"
10:14:30	10:14:30	SPORTS LINE	1'			"
	10:17:45	1. Boys Rep.		PS	L	"
		2.				"
	10:22:00	3. Secret Name-JACKIE HOPKINS		NCSA		"
		4.				"
	10:22:10	5. News Tip Promo		NCSA		"
		6.				"
10:25	10:25:00	7. Telephone Promo		NCSA	Tape 1, Tag	"
		[100]				"
10:29:00	10:30:00	Stn ID				"
10:29:30	10:30:30	MID HOUR HEADLINES	45"			"
	10:35:20	1. More Music Promo		NCSA		"
		2.				"
	10:35:10	3. Cromwell Salute	:10	NCSA	L	"
		4.				"
	10:38:30	5. Contest (Top 3)		NCSA		"
		6.				"
	10:43:00	7. Broadcasters Assn.		PS	L	"
10:40:30	10:40:00	WEATHER SCOPE	1'			"
10:44:00	10:45:00	Stn ID Jingle				"
10:44:30	10:45:15	CRIME BEAT	1'			"
	10:49:05	1. M.D.		PS	ET 2, Cut 6	"
		2.				"
		3. Record Shop Promo		NCSA		"
		4.				"

Time On	Time Off	Sponsor and Program	Length	Type	Conti- nuity	Anncr.
AM						[Roy Elwell]
10:55:30	10:55:30	NEWS	4'30"			
11:00:00	11:00:00	Stn ID				
		<u>THE ROY ELWELL SHOW</u>		RM		
	11:04:10	1. [Courtesy Salute	:10	NCSA	L]	"
	11:09:10	2. Loretta Young Way	:60	NCSA	L #2	"
		3.				
	11:12:30	4. Contest (Top 3)		NCSA		"
		5.				
		6.				
		7.				
11:14:00	11:14:30	Stn ID				"
11:14:30	11:15:00	SPORTS LINE	1'			"
	11:18:10	1. Kinney Salute	:10	NCSA	L, ET 5	"
		2.				
	11:23:30	3. Broadcasters Assn.		PS	L	"
		4.				
		5.				
	11:24:10	6. D.J. Cross Plug		NCSA		"
		7.				
11:29:00	11:29:00	Stn ID				"
11:29:30	11:29:30	MID HOUR HEADLINES	45"			"
	11:33:20	1. Secret Name-JACKIE HOPKINS		NCSA		"
		2.				
	11:33:30	3. More Music Promo		NCSA		"
		4.				
11:35	11:37:00	5. Telephone Promo		NCSA		"
		6.				
	11:44:30	7. BEST BUY OF DAY	:60	AGRI.	Tape	
		9c (To be given by Newsmen)			O & C- Live	"
11:44:00	11:44:15	Stn ID Jingle				"
11:44:30	11:48:30	WEATHER SCOPE	1'			"
	11:45:10	1. Courtesy Salute	:10	NCSA	L	"
		2.				
		3.				
	11:52:00	4. Boys Rep.		PS	L	"
11:55:30	11:55:30	NEWS AND FARM REPORT	4'30"	CP-T	ET-108	"
		BY C O L G A T E				
12:00:00N	12:00:00N	Stn ID				"

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Time On	Time Off	Sponsor and Program	Length	Type	Continuity	Annncr.
NOON						[Bob R. Cole on 12 noon]
12:00	12:00	<u>THE BOB COLE SHOW</u>		RM		
	12:03	1. D.J. Cross Plug		NCSA		"
	12:06 1/2	2. More Music Promo		NCSA		"
	12:09	3. M.D.		PS	L	"
	12:12 1/2	4. Secret Name-JACKIE HOPKINS		NCSA		"
12:14:00		Stn ID				"
12:14:30	12:15	SPORTS LINE	1'			"
	12:22	1. News Tip Promo		NCSA		"
	12:25 1/2	2. Broadcasters Assn.		PS	L	"
12:29:00		Stn ID				"
12:29:30	12:30	MID HOUR HEADLINES	45"			"
	12:41	1. Dr. Finley	:30	CSA	L	"
12:35	12:34	2. Telephone Promo		NCSA	Tape 1, Tag	"
12:44:00		Stn ID Jingle				"
12:44:30	12:44	WEATHER SCOPE	1'			"
	12:47 1/2	1. Contest (Top 3)		NCSA		"
	12:50 1/2	2. Boys Rep.		PS	L	"
	12:50	3. Record Shop Promo		NCSA		"
12:55:00	12:55 1/2	NEWS	4'30"			"
1:00:00	1:00	Stn ID				"
	1:00	<u>THE BOB COLE SHOW</u>		RM		"

Time On	Time Off	Sponsor and Program	Length	Type	Continuity	Annncr.
PM						[Bob R. Cole on 12 noon]
	1:03	1. Courtesy Salute	:10	NCSA	L	"
		2.				
	1:05	3. More Music Promo		NCSA		"
		4.				
	1:07	5. Telephone Promo		NCSA	Tape 1, Tag	"
		6.				
1:10	1:14	7. Sign of Gladiator Salute	:10	NCSA	L	"
1:14:00		Stn ID				"
1:14:30	1:14 1/2	SPORTS LINE	1'			"
	1:18	1. Contest (Top 3)		NCSA		"
		2.				
	1:21	3. Mortgage Refinance	:60	CSA	L #2	"
		4.				
		5.				
	1:25	6. Seaboard Salute	:10	NCSA	L	"
		7.				
1:29:00		Stn ID				

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1:29:30	1:30	MID HOUR HEADLINES	45"			"
	1:33	1. Schlitz	:60	CSA	ET #C, Cut 1, Tag 1	"
		2.				
		3.				
	1:38	4. Seaboard Finance	:60	CSA	ET 3, Tag 1	"
		5.				
	1:40	6. D.J. Cross Plug		NCSA		"
		7.				
1:40:30	1:40 1/2	WEATHER SCOPE	1'			"
1:44:00		Stn ID Jingle				"
1:44:30	1:46	CRIME BEAT	1'			"
	1:50	1. Secret Name-JACKIE HOPKINS		NCSA		"
		2.				
	1:55	3. Broadcasters Assn.		PS	L	"
		4.				

Time On	Time Off	Sponsor and Program	Length	Type	Continuity	Annncr.
PM						[Bob Cole]
1:55:00	1:55 1/2	NEWS	4'30"			"
2:00:00	2:00	Stn ID				"
	2:00	<u>THE BOB COLE SHOW</u>		RM		"
	2:04	1. Contest (Top 3)		NCSA		"
		2.				
	2:07	3. Kinney Salute	:10	NCSA	L, ET 5	"
		4.				
		5.				
		6.				
	2:12 1/2	7. Sign /Gladiator	:30	CSA	ET [& Tag] j.c.	"
2:14:00		Stn ID				"
2:14:30	2:16	SPORTS LINE	1'			"
		1.				
	2:21	2. News Tip Promo		NCSA		"
		3.				
	2:24	4. More Music Promo		NCSA		"
		5.				
	2:28	6. M.D.		PS	ET 2, Cut 4	"
		7.				
2:29:00		Stn ID				"
2:29:30	2:30	MID HOUR HEADLINES	45"			"
	2:34	1. Courtesy Salute	:10	NCSA	L	"
		2.				
	2:37	3. Secret Name-JACKIE HOPKINS		NCSA		"
		4.				
	2:41	5. Y-Teens		PS	L	"
		6.				
		7.				
2:44:00		Stn ID Jingle				"
2:44:30	2:44	WEATHER SCOPE	1'			"
	2:47	1. M.D.		PS	ET 1,Cut 7	"
		2.				
	2:50	3. Telephone Promo		NCSA	Tape 1, Tag	"
	2:49	4. D.J. Cross Plug		NCSA		"
2:55:30	2:55 1/2	NEWS	4'30"			[Bob Cole off
3:00:00	3:00	Stn ID				3:00 pm]

Time On	Time Off	Sponsor and Program	Length	Type	Continuity	Annncr. [Jimmy O'Neill]
PM 3:00:00		<u>THE JIMMY O'NEILL SHOW</u>		RM		
	3:03	1. Broadcasters Assn.		PS	L	"
		2.				
	3:06	3. Secret Name-JACKIE HOPKINS		NCSA		"
		4.				
	3:09	5. More Music Promo		NCSA		"
		6.				
		7.				
3:14:00	3:14:30	Stn ID				"
3:14:30	3:16:30	SPORTS LINE	1'			"
	3:18	1. Kinney Salute	:10	NCSA	L, ET 5	"
		2.				
	3:21	3. Sign/Gladiator	:30	CSA	ET [& Tag] J.C.	"
		4.				
3:25	3:26	5. Telephone Promo		NCSA	Tape 1, Tag	"
		6.				
		7.				
3:29:00	3:29:30	Stn ID				"
3:29:30	3:30:30	MID HOUR HEADLINES	45"			"
	3:33	1. Boys Rep.		PS	L	"
		2.				
	3:36	3. News Tip Promo		NCSA		"
		4.				
	3:39	5. D.J. Cross Plus		NCSA		"
		6.				
		7.				
3:44:00	3:44:30	Stn ID Jingle				"
3:44:30	3:45:30	WEATHER SCOPE	1'			"
	3:48	1. Contest (Top 3)		NCSA		"
		2.				
	3:51	3. M.D.		PS	ET 1,	"
		4. Record Shop Promo		NCSA	Cut 1	"
3:55:30	3:59:30	NEWS	4'30"			"
4:00:00	4:00	Stn ID				"

Time On	Time Off	Sponsor and Program	Length	Type	Conti- nuity	Annocr.
PM						[Jimmy O'Neill]
	4:00	<u>THE JIMMY O'NEILL SHOW</u>		RM		
	4:03	1. Courtesy Chev.	:60	CSA	Tape 7, L Tag 1	"
		2.				
	4:06	3. Secret Name-JACKIE HOPKINS		NCSA		"
		4.				
	4:09	5. D.J. Cross Plug		NCSA		"
4:10	4:12	6. Telephone Promo		NCSA		"
		7.				
4:14:00	4:14:30	Stn ID				"
4:14:30	4:15:30	SPORTS LINE	1'			"
	4:18	1. Kinney Shoes	:60	CSA	ET 2, L #1, Tag 3	"
		2.				
	4:21	3. More Music Promo		NCSA		"
	4:23	4. News Tip Promo		NCSA		"
		5.				
	4:25	6. Auto Show	:20	NCSA	L	"
		7.				
4:29:00	4:29:30	Stn ID				

4:29:30	4:30:30	MID HOUR HEADLINES	45"			"
	4:31	1. Mortgage Refinance	:60	CSA	L #1	"
		2.				
	4:33	3. Contest (Top 3)		NCSA		"
		4.				
	4:36	5. Auto Show	:20	NCSA	L	"
		6.				
		7.				
4:40:30	4:41	WEATHER SCOPE	1'			"
4:44:00	4:44:30	Stn ID Jingle				"
4:44:30	4:45:30	CRIME BEAT	1'			"

Time On	Time Off	Sponsor and Program	Length	Type	Continuity	Annncr.
PM						[Jimmy O'Neill]
	4:48	1. Loretta Young Way	:60	NCSA	L #1	
		2.				
	4:51	3. Schlitz	:30	CSA	ET #C, Cut 2, Tag 2	"
	4:55	4. Sign/Gladiator	:30	CSA	ET [& Tag]	"
4:55:00	4:59:30	NEWS BY LFD CHEVROLET 4'30"		CP-T	L	"
5:00:00	5:00	Stn ID				"
		<u>THE JIMMY O'NEILL SHOW</u>		RM		"
	5:03	1. Contest (Top 3)		NCSA		"
		2.				
	5:06	3. Seaboard Finance	:60	CSA	ET 4, Tag 2	"
		4.				
	5:09	5. Ford Trucks (M.G.)	:60	CSA	ET-1	"
		6.				
		7.				
5:14:00	5:14:30	Stn ID				"
5:14:30	5:15:30	SPORTS LINE	1'			"
	5:18	1. Kinney Shoes	:60	CSA	ET 5,L #2-Tag 4	"
		2.				
	5:21	3. D.J. Cross Plug		NCSA		"
		4.				
	5:23	5. World Wide Attr.	:60	CSA	ET [-A Cut 1]	"
		6.				
		7.				
5:29:00	5:29:30	Stn ID				
5:29:30	5:30:30	MID HOUR HEADLINES CROMWELL Sponsor	1'45"	CP-T	ET	"
		1.				
	5:33	2. Courtesy Chev.	:60	CSA	Tape 9, L Tag 2	"
		3.				
	5:36	4. Secret Name-JACKIE HOPKINS		NCSA		"
		5.				
5:40	5:41	6. Auto Show	:20	NCSA	L	"
	5:43	7. Telephone Promo		NCSA	Tape 1, Tag	"

Time On	Time Off	Sponsor and Program	Length	Type	Continuity	Annncr.
PM						[Jimmy O'Neill]
5:44:00	5:44:30	Stn ID Jingle				
5:44:30	5:45:30	WEATHER SCOPE BY LFD CHEV.	2'	CP-T	L	"
	5:48	1. More Music Promo		NCSA		"
	5:51	2. Y-Teens		PS	L	"
		3.				
		4.				
5:55:30	5:59:30	NEWS	4'30"			"
6:00:00	6:00:00	Stn ID				"

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6:00:00		<u>THE JIMMY O'NEILL SHOW</u>		RM		"
	6:03	1. D.J. Cross Plug		NCSA		"
		2.				
	6:06	3. Sign/Gladiator	:30	CSA	ET [& Tag]	"
		4.				
	6:09	5. M.D.		PS	L	"
		6. [W. W. Attr.]	[:60]	[CSA]	[ET B, Cut 1]	"
	6:12	7. Auto Show	:20	NCSA	L	"
6:14:00	6:14:30	Stn ID				"
6:14:30	6:15:30	SPORTS LINE	1'			"
	6:18	1. Kinney Salute	:10	NCSA	L, ET 6	"
		2.				
	6:21	3. Courtesy Chev.	:60	CSA	Tape 1, L Tag 1	"
		4.				
	6:23	5. News Tip Promo		NCSA		"
		6.				
	6:25	7. Contest (Top 3)		NCSA		"
6:20:00	6:29:30	Stn ID				"
6:29:30	6:30:30	MID HOUR HEADLINES	45"			"
	6:33	1. Secret Name-JACKIE HOPKINS		NCSA		"
		2.				
	6:36	3. Broadcasters Assn.		PS	L	"
		4.				
	6:39	5. Auto Show	:20	NCSA	L	"
	6:41	6. More Music Promo		NCSA		"
		7. Telephone Promo		NCSA	Tape 1, Tag	"

Time On	Time Off	Sponsor and Program	Length	Type	Conti- nuity	Anncr. [Jimmy O'Neill]
PM						
6:44:00	6:44:30	Stn ID Jingle				"
6:44:30	6:45:30	WEATHER SCOPE	1'			"
	6:48	1. World Wide PALLADIUM	:60	CSA	ET-2	"
		2.				"
	6:51	3. Auto Show	:20	NCSA	L	"
		4.				"
6:55:30	6:59:30	NEWS	4'30"			[Bruce Harris]
7:00:00	7:00	Stn ID				"
	7 - 12	<u>THE FROSTY HARRIS SHOW</u>		RM		"
	7:03	Contest (Top 3)		NCSA		"
	7:06	More Music Promo		NCSA		"
	7:09	Boys Rep.		PS	L	"
7:14:00	7:15	Stn ID				"
7:14:30	7:16	SPORTS LINE	1'			"
	7:19	Seaboard Salute	:10	NCSA	L	"
	7:21	M.D.		PS	ET 2, Cut 4	"
	7:24	Auto Show	:20	NCSA	L	"
7:29:00	7:29:30	Stn ID				"
7:29:30	7:30	MID HOUR HEADLINES	45"			"
	7:31	Auto Show	:20	NCSA	L	"
	7:34	Secret Name-JACKIE HOPKINS		NCSA		"
	7:39	Telephone Promo		NCSA	Tape 1, Tag	"
7:40:30	7:42	WEATHER SCOPE	1'			"
7:44:00	7:44:30	Stn ID Jingle				"
7:44:30	7:46:30	CRIME BEAT	1'			"
	7:49	D. J. Cross Plug		NCSA		"
	7:51	Broadcasters Assn.		PS	L	"
7:55:30	8:00	NEWS	4'30"			"
8:00:00	8:00	Stn ID				"

Time On	Time Off	Sponsor and Program	Length	Type	Conti- nuity	Anncr. [Bruce Harris]
PM						
8:00:00		<u>THE FROSTY HARRIS SHOW</u>		RM		
	8:06	Telephone Promo		NCSA	Tape 1, Tag	"
	8:09	Boys Rep.		PS	L	"
	8:12	D.J. Cross Plug		NCSA		"
8:14:00		Stn ID				"
8:14:30	8:16	SPORTS LINE	1'			"
	8:19	Record Shop Promo		NCSA		"
	8:22	News Tip Promo		NCSA		"
	8:25	Y-Teens		PS	L	"
8:29:00	8:30	Stn ID				"
8:29:30	8:30	MID HOUR HEADLINES	45"			"
	8:32	Secret Name-JACKIE HOPKINS		NCSA		"
	8:36	Contest (Top 3)		NCSA		"
	8:39	World Wide Attr.	:60	CSA	ET [A #1]	"
8:44:00	8:45	Stn ID Jingle				"
8:44:30	8:46	WEATHER SCOPE	1'			"
	8:49	More Music Promo		NCSA		"
	8:52	M.D.		PS	L	"
8:55:30	9:00	NEWS	4'30"			"
9:00:00	9:00	Stn ID				"
		<u>THE FROSTY HARRIS SHOW</u>		RM		"
	9:03	Broadcasters Assn.		PS	L	"
	9:10	Telephone Promo		NCSA	Tape 1, Tag	"
	9:11	[W. W. Attr.]	[:60]	[CSA]	[ET #B, Cut 1]	"
9:14:00	9:14	Stn ID				"
9:14:30	9:15	SPORTS LINE	1'			"
	9:18	Contest (Top 3)		NCSA		"
	9:21	M.D.		PS	ET 2, Cut 6	"
	9:25	World Wide PALLADIUM	:60	CSA	ET-2	"

Time On	Time Off	Sponsor and Program	Length	Type	Conti- nuity	Anncr.
PM						
9:29:00	9:31	Stn ID				[Bruce Harris]
9:29:30	9:31	MID HOUR HEADLINES	45"			
	9:34	Self-Realization Salute	:10	NCSA	L	"
	9:37	More Music Promo		NCSA		"
9:44:00	9:44	Stn ID Jingle				"
9:44:30	9:45	WEATHER SCOPE	1'			"
	9:47	Secret Name-JACKIE HOPKINS		NCSA		"
	9:50	Boys Rep.		PS	L	"
	9:52	D.J. Cross Plug		NCSA		"
9:55:30	10:00	NEWS	4'30"			"
10:00:00	10:00	Stn ID				"
	10:04	<u>THE FROSTY HARRIS SHOW</u>		RM		"
	10:08	Self-Realization	:60	CSA	ET-3	"
	10:11	Contest (Top 3)		NCSA		"
	10:13	D.J. Cross Plug		NCSA		"
10:14:00		Stn ID				"
10:14:30	10:14	SPORTS LINE	1'			"
	10:17	Rainier Ale	:30	CSA	ET-6	"
	10:23	Telephone Promo		NCSA	Tape 1, Tag	"
10:29:00	10:30	Stn ID				"
10:29:30	10:30	MID HOUR HEADLINES	45"			"
	10:33	Secret Name-JACKIE HOPKINS		NCSA		"
	10:34	More Music Promo		NCSA		"
	10:38	Broadcasters Assn.		PS	L	"
10:40:30	10:44	WEATHER SCOPE	1'			"
10:44:00	10:44:30	Stn ID Jingle				"
10:44:30	10:45	CRIME BEAT	1'			"
	10:48	Y-Teens		PS	L	"
	10:52	Record Shop Promo		NCSA		"
10:55:30	11:00	NEWS	4'30"			"
11:00:00	11:00	Stn ID				"
		<u>THE FROSTY HARRIS SHOW</u>		RM		"
		* Sponsored by <u>Standard Land</u> <u>Development CP L</u>				
	11:04	D. J. Cross Plug		NCSA		"
	11:07	More Music Promo		NCSA		"

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Time On	Time Off	Sponsor and Program	Length	Type	Conti- nuity	Anncr.
PM						
11:14:00	11:14	Stn ID				[Bruce Harris]
11:14:30	11:15	SPORTS LINE	1'			
	11:17	Secret Name-JACKIE HOPKINS		NCSA		"
	11:21	News Tip Promo		NCSA		"
11:29:00	11:30	Stn ID				"
11:29:30	11:30	MID HOUR HEADLINES	45"			"
	11:35	Telephone Promo		NCSA	Tape 1, Tag	"
11:44:00	11:44	Stn ID Jingle				"
11:44:30	11:45	WEATHER SCOPE	1'			"
	11:48	Contest (Top 3)		NCSA		"
11:55:30	12:00	NEWS	4'30"			"
12:00:00	12:00 MID.	S I G N O F F				"

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Tuesday, October 20, 1959KRLA
Pasadena, California

Time On	Time Off	Program and Sponsor	Length	Type	Conti- nuity	Anncr.
AM						[Frank Pollack off at 6 AM Perry Allen]
5:55:30	5:55:30	News and Farm Report	4'30"			
6:00:00	6:00	Stn ID				
		<u>THE PERRY ALLEN SHOW</u>		RM		
	6:03	1. Secret Name-JOAN BAINBRIDGE		NCSA		"
		2.				
	6:07	3. Telephone Promo		NCSA		"
		4.				
		5.				
	6:11	6. M.D.		PS	L	"
	6:12	7. Auto Show	:20	NCSA	L	"

Time On	Time Off	Program and Sponsor	Length	Type	Conti- nuity	Annncr.
AM						
6:14:00	6:14:25	Stn ID				[Perry
6:14:30	6:15:30	SPORTS LINE	1'			Allen]
6:16	6:18	1. Ford Trucks	:60	CSA	ET, Cut 2	"
		2.				
	6:21	3. Seaboard Salute	:10	NCSA	L	"
		4.				
	6:25	5. Courtesy Salute	:10	NCSA	L	"
		6.				
	6:26	7. D.J. Cross Plug		NCSA		"
6:29:00	6:29:28	Stn ID				"
6:29:30	6:30:15	MID HOUR HEADLINES	45"			"
	6:33	1. Kinney Shoes Salute	:10	NCSA	L,ET 4	"
		2.				
	6:37	3. News Tip Promo		NCSA		"
		4.				
	6:38	5. More Music Promo		NCSA		"
		6. Word for the Day	2'	Rel	L	"
	6:41	7. Courtesy Chev.	:60	CSA	Tape 2, L #2	"
6:44:00	6:44:27	Stn ID Jingle				"
6:44:30	6:45:30	WEATHER SCOPE	1'			"
	6:47	1. Contest (Top 3)		NCSA		"
	6:48	2. Auto Show	:20	NCSA	L	"
	6:51	3. Sign/Gladiator	:30	CSA	ET 1, L Tag	"
	6:55	4. Boys Rep.		PS	L	"
6:55:30	6:59:55	NEWS BY COLGATE	4'30"	CP-T	CDC- 363-ET	"
7:00:00	7:00:05	Stn ID				"
		<u>THE PERRY ALLEN SHOW</u>		RM		"
	7:03	1. Record Shop Promo		NCSA		"
		2.				
	7:07	3. Telephone Promo		NCSA	Tape 1, Tag	"
		4.				
	7:11	5. Broadcasters Assn.		PS	L	"
		6.				
	7:12	7. D.J. Cross Plug		NCSA		"

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Time On	Time Off	Program and Sponsor	Length	Type	Continuity	Annncr.
AM						
7:14:00	7:14:19	Stn ID				[Jerry Allen]
7:14:30	7:15:30	SPORTS LINE	1'			
	7:18	1. Kinney Shoes Salute	:10	NCSA	L, ET 5	"
		2.				
	7:21	3. More Music Promo		NCSA		"
		4.				
		5.				
	7:25	6. Courtesy Chev.	:60	CSA	Tape 7, L #1	"
		7.				
7:29:00	7L29:15	Stn ID				

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Wednesday, October 21, 1959KRLA
Pasadena, California

Time On	Time Off	Program and Sponsor	Length	Type	Continuity	Annncr.
AM						
5:55:30	5:55:30	News and Farm Report	4'30"			[Frank Pollack off at 6 AM Perry Allen]
6:00:00	6:00:00	Stn ID				
		<u>THE PERRY ALLEN SHOW</u>		RM		
	6:03	1. Contest (Top 3)		NCSA		"
		2.				
	6:04	3. D. J. Cross Plug		NCSA		"
		4.				
	6:07	5. Courtesy Salute	:10	NCSA	L	"
		6.				
	6:11	7. Seaboard Salute	:10	NCSA	L	"
						"
6:14:00	6:14:25	Stn ID				"
6:14:30	6:15:30	SPORTS LINE	1'			"
	6:18	1. News Tip Promo		NCSA		"
		2.				
	6:18:50	3. Auto Show	:20	NCSA	L	"
		4.				
	6:23	5. Telephone Promo		NCSA	Tape 1, Tag	"
		6.				
	6:26:20	7. Boys Rep.		PS	L	"

Time On	Time Off	Program and Sponsor	Length	Type	Conti- nuity	Anncr.
AM						[Perry Allen]
6:29:00	6:29:19	Stn ID				"
6:29:30	6:30:15	MID HOUR HEADLINES	45"			"
	6:33	1. Cromwell Salute	:10	NCSA	L	"
		2. Word for the Day	2'	Rel	L	"
	6:37	3. Kinney Salute	:10	NCSA	L, ET 4	"
		4.				
	6:38	5. More Music Promo		NCSA		"
		6.				
	6:41	7. Courtesy Chev.	:60	CSA	Tape 7, L #1	"
6:44:00	6:44:19	Stn ID Jingle				"
6:44:30	6:45:30	WEATHER SCOPE	1'			"
	6:48	1. Secret Name-BILL ZECK		NCSA		"
	6:48:45	2. Auto Show	:20	NCSA	L	"
	6:51	3. M.D.		PS	ET 1, Cut 7	"
	6:55:10	4. Sign/Gladiator	:30	CSA	ET 1, Tag	"
6:55:30	6:59:55	NEWS COLGATE	4'30"	CP-T	L	"
7:00:00	7:00:05	Stn ID				"
		<u>THE PERRY ALLEN SHOW</u>		RM		"
	7:03	1. More Music Promo		NCSA		"
		2.				
	7:07	3. Y-Teens		PS	L	"
		4.				
	7:11	5. D.J. Cross Plug		NCSA		"
		6.				
	7:12	7. Contest (Top 3)		NCSA		"
7:14:00	7:14:25	Stn ID				"
7:14:30	7:15:30	SPORTS LINE	1'			"
	7:18	1. Kinney Shoes Salute	:10	NCSA	L, ET #5	"
		2.				
	7:18:55	3. Secret Name-BILL ZECK		NCSA		"
		4.				
	7:22	5. Rainier Ale	:30	CSA	ET-2	"
		6.				
	7:26	7. Courtesy Chev.	:60	CSA	Tape 9, L #2	"
7:29:00	7:29:15	Stn ID				"

Thursday, October 22, 1959KRLA
Pasadena, California

Time On	Time Off	Program and Sponsor	Length	Type	Conti- nuity	Anncr.
AM						[Frank Pollack off at 6 AM Perry Allen]
5:55:30	5:55:30	News and Farm Report	4'30"			
6:00:00	6:00	Stn ID				
		<u>THE PERRY ALLEN SHOW</u>		RM		
	6:03	1. Secret Name-ANNE HUTSON		NCSA		"
		2.				
	6:03:50	3. Boys Rep.		PS	L	"
		4.				
	6:08	5. D.J. Cross Plug		NCSA		"
		6.				
	6:11	7. News Tip Promo		NCSA		"
						"
6:14:00	6:14:23	Stn ID				"
6:14:30	6:15:30	SPORTS LINE	1'			"
	6:18	1. Contest (Top 3)		NCSA		"
		2.				
	6:21	3. Seaboard Salute	:10	NCSA	L	"
		4.				
	6:25	5. Auto Show	:20	NCSA	L	"
		6.				
		7. Word for the Day	2'	Rel	L	"
						"
6:29:00	6:29:15	Stn ID				"
6:29:30	6:30:15	MID HOUR HEADLINES	45"			"
	6:33	1. Kinney Salute	:10	NCSA	L, ET 4	"
		2.				
	6:34	3. More Music Promo		NCSA		"
		4.				
	6:37	5. Cromwell Salute	:10	NCSA	L	"
		6.				
	6:41	7. Courtesy Chev.	:60	CSA	Tape 9, L #2	"
						"
6:44:00	6:44:20	Stn ID Jingle				"
6:44:30	6:45:30	WEATHER SCOPE	1'			"
	6:48	1. Auto Show	:20	NCSA	L	"
	6:51	2. Telephone Promo		NCSA	Tape 1, Tag	"
						"
	6:55	3. Parkway Salute	:10	NCSA	L [#3]	"
		4.				

Time On	Time Off	Program and Sponsor	Length	Type	Continuity	Anncr.
AM						[Perry Allen]
6:55:30	6:59:55	NEWS BY COLGATE	4'30"	CP-T	ET, CDC-362	"
7:00:00	7:00:05	Stn ID				"
		<u>THE PERRY ALLEN SHOW</u>		RM		"
	7:03	1. Secret Name-ANNE HUTSON		NCSA		"
		2.				
	7:07	3. Telephone Promo		NCSA	Tape 1, Tag	"
		4.				
		5.				
		6.				
7:13	7:11	7. Parkway Car Wash	:60	CSA	L #1	"
7:14:00	7:14:23	Stn ID				"
7:14:30	7:15:30	SPORTS LINE	1'			"
	7:18	1. Kinney Salute	:10	NCSA	L, ET 5	"
		2.				
	7:21	3. Courtesy Chev.	:60	CSA	Tape 1, L #1	"
		4.				
	7:25	5. More Music Promo		NCSA		"
		6.				
	7:25	7. D.J. Cross Plug		NCSA		"
7:29:00	7:29:15	Stn ID				"

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Friday, October 23, 1959KRLA
Pasadena, California

Time On	Time Off	Program and Sponsor	Length	Type	Continuity	Anncr.
5:55:30	5:55:30	News and Farm Report	4'30"			[Frank Pollack off at 6 AM Perry Allen]
6:00:00	6:00	Stn ID				
AM		<u>THE PERRY ALLEN SHOW</u>		RM		
	6:03	1. Seaboard Finance Salute	:10	NCSA	L	
		2.				
	6:07	3. Telephone Promo		NCSA	Tape 1, Tag	"
		4.				
	6:10:15	5. Smokey the Bear		PS	ET[L]	"
		6.				
	6:11	7. Secret Name-JEAN CARROLL		NCSA		"

Time On	Time Off	Program and Sponsor	Length	Type	Continuity	Annncr.
AM						[Perry Allen]
6:14:00	6:14:23	Stn ID	1'			
6:14:30	6:15:30	SPORTS LINE				
	6:18	1. Courtesy Salute	:10	NCSA	L	"
		2.				"
	6:21	3. Auto Show	:20	NCSA	L	"
		4.		NCSA		"
	6:22	5. D.J. Cross Plug				"
		6.		NCSA		"
	6:26	7. News Tip Promo				"
6:29:00	6:29:15	Stn ID	45"			"
6:29:30	6:30:15	MID HOUR HEADLINES				"
	6:33	1. Kinney Salute	:10	NCSA	L, ET 4	"
		2.		NCSA		"
	6:34	3. More Music Promo				"
		4.				"
	6:38	5. Courtesy Chev.	:60	CSA	Tape 1, L #1	"
		6. Word for the Day	2'	Rel	L	"
	6:41	7. Contest (Top 3)		NCSA		"
6:44:00	6:44:23	Stn ID Jingle	1'			"
6:44:30	6:45:30	WEATHER SCOPE				"
	6:48	1. Sign/Gladiator	:30	CSA	ET 1, L Tag	"
		2. Parkway Salute	:10	NCSA	L #4	"
	6:49	3. Entertainment Compass		NCSA		"
	6:52	4. Auto Show	:20	NCSA	L	"
	6:55					"
6:55:30	6:59:55	NEWS BY COLGATE	4'30"	CP-T	ET, CDC-362	"
7:00:00	7:00:05	Stn ID				"
		<u>THE PERRY ALLEN SHOW</u>		RM		"
	7:03	1. Y-Teens		PS	L	"
		2.				"
	7:07	3. Telephone Promo		NCSA	Tape 1, Tag	"
		4.				"
	7:09	5. D.J. Cross Plug		NCSA		"
		6.				"
	7:12	7. Parkway Car Wash	:60	CSA	L #3	"

Time On	Time Off	Program and Sponsor	Length	Type	Continuity	Annocr.
AM						
7:14:00	7:14:19	Stn ID				[Perry Allen]
7:14:30	7:15:30	SPORTS LINE	1'			
	7:18	1. Kinney Salute	:10	NCSA	L, ET 5	"
		2.		NCSA		"
	7:19	3. Contest (Top 3)				"
		4.				"
	7:22	5. Rainier Ale	:30	CSA	ET-2	"
		6.				"
	7:25	7. Courtesy Chev.	:60	CSA	Tape 2, L #2	"
7:29:00		Stn ID				"

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Saturday, October 24, 1959

KRLA
Pasadena, California

Time On	Time Off	Program and Sponsor	Length	Type	Continuity	Annocr.
AM						[Frank Pollack off at 6 AM Perry Allen]
5:55:30	5:55:30	News and Farm Report	4'30"			
6:00:00		Stn ID				
	6:00	<u>THE PERRY ALLEN SHOW</u>		RM		
	6:03	1. Telephone Promo		NCSA	Tape 1, Tag	"
		2.				"
	6:07	3. More Music Promo		NCSA		"
		4.				"
	6:08	5. M.D.		PS	ET 1, Cut 7	"
		6.				"
	6:11	7. Broadcasters Assn.		PS	L	"
6:14:00	6:14:25	Stn ID				"
6:14:30	6:15:30	SPORTS LINE	1'			"
	6:18	1. Auto Show	:20	NCSA	L	"
		2.				"
	6:22	3. Boys Rep.		PS	L	"
		4.				"
	6:23	5. Secret Name-JANE LYDER		NCSA		"
		6.				"
	6:26:30	7. Contest (Top 3)		NCSA		"

Time On	Time Off	Program and Sponsor	Length	Type	Conti- nuity	Anncr.
AM						
6:29:00	6:29:15	Stn ID				[Perry Allen]
6:29:30	6:30:15	MID HOUR HEADLINES	45"			
	6:33	1. D.J. Cross Plug		NCSA		"
		2.				
	6:34	3. Auto Show	:20	NCSA	L	"
		4.				
	6:37	5. News Tip Promo		NCSA		"
		6. Word for the Day	2'	Rel	L	"
	6:41	7. Smokey the Bear		PS		"
6:44:00	6:44:23	Stn ID Jingle				"
6:44:30	6:45:30	WEATHER SCOPE	1'			"
	6:48	1. Y-Teens		PS	L	"
	6:51	2. Vic's Car Wash Salute	:10	NCSA	L #5	"
		3.				
	6:55:10	4. Record Shop Promo		NCSA		"
6:55:30	6:59:55	NEWS By Oscar Maples Ford	4'30"	CP-T	L	"
7:00:00	7:00:05	Stn ID				"
		<u>THE PERRY ALLEN SHOW</u>		RM		"
	7:03	1. Telephone Promo		NCSA	Tape 1, Tag	"
		2.				
	7:07	3. M.D.		PS	L	"
		4.				
	7:08:00	5. Broadcasters Assn.		PS	L	"
		6. [Parkway]				
7:13	7:14	7. Vic's Car Wash	:60	CSA	L #1	"
7:14:00	7:14:20	Stn ID				"
7:14:30	7:15:30	SPORTS LINE	1'			"
	7:18:20	1. Contest (Top 3)		NCSA		"
		2.				
	7:19	3. Secret Name-JANE LYDER		NCSA		"
		4.				
	7:23	5. Courtesy Salute	:10	NCSA	L	"
		6.				
	7:27	7. Y-Teens		PS	L	"
7:29:00	7:29:18	Stn ID				

[Rec'd. November 12, 1959 - F.C.C.]

EXHIBIT NO. 2

(November 11, 1959)

The composite week which covers the period from October 18 to 24, inclusive, represents the basic format that KRLA has adopted. Because of the limitations of time, some phases of the program format have not been developed to the degree that is intended and desired by the licensee.

While limitations of time and the pressure of events (completion of the 50 KW construction) have weighed against KRLA, management believes that it has made substantial progress in the fulfillment of the policies (Exhibit 11, BAPL-171).

The basic ingredient of the proposed programming of KRLA is music. While this phase of its operation will always be under constant scrutiny and change, management has evolved its basic format which should remain substantially the same throughout the coming license period.

In its news coverage the station has secured its full complement of personnel and is continuing its efforts to build an efficient stringer organization. It is using on-the-air promotion to encourage local news tips and the use of recorded telephone news coverage.

In the area of religious programs, the composite week reflects only the daily inspirational message. The station has had three meetings with the Pasadena Ministerial Association in an effort to work out a satisfactory method of selecting representative ministers to prepare these messages. To date, no satisfactory solution has been reached by the Ministerial Association and in the absence of such solution, the station is using professionally prepared religious messages. It is still the station's intention to utilize representatives of local religious organizations for the preparation of its inspirational messages, to increase in frequency

of these messages, and to broadcast in addition two one-half hour programs on Sunday. In the event the cooperation of the Ministerial Association is not forthcoming, the station will then make individual contacts with representatives of the various faiths for the purpose of securing their cooperation. These proposals are represented and incorporated in Exhibit 3.

Insofar as agricultural programming is concerned, the difference between the composite week and the typical week's schedule lies solely in the amount of agriculture information that has been broadcast. The station's basic policy contemplates agricultural information and it is proposed to continue to increase the agricultural content of the news and weather programs to the degree indicated by the percentages indicated by the breakdown of Exhibit 3. The station does not now propose any separate entertainment programming of an agricultural nature.

While the week of October 18-24 does not reflect any educational programming, the station was in fact cooperating with educational authorities during that particular week through the use of a saturation spot campaign requested by the Pasadena public schools. Station KRLA had contacted the Los Angeles County School System in September of 1959 to determine the exact manner in which the station could best be of service to the Los Angeles County School System. Subsequently, the station was contacted by representatives of Pasadena public schools, and as a result the station and the schools evolved a spot announcement campaign on the participation of students in extra curricular activities. This campaign was designed by the school authorities to increase student participation in such extra curricular activities as a method of combating juvenile delinquency. While

the reflected percentage analysis does not indicate any educational programming, a computation of the actual time devoted to spot announcements in this educational campaign was equal to .56% of the

broadcast week. It is the intention of the station to continue to utilize its facilities for such spot announcement campaigns in addition to the broadcast of the capsule type educational programs reflected on Exhibit 3 which have replaced the originally conceived "Town Hall." As a part of its work on behalf of educational institutions, the station has contacted the 429 high schools and junior high schools in the greater Los Angeles area and invited each of those institutions to cooperate with the station in promotion of special events and newsworthy activities of the individual schools in question.

The Community Service program originally designated as "Town Crier" has been relabeled "Community Calendar." This program segment will be utilized for messages by leaders of civic, charitable and governmental agencies, and is designed to supplement the normal spot announcements carried for and on behalf of these organizations. In addition, messages by individuals of recognized responsibility and position will be used to present current questions of importance and will be designed to encourage public interest either pro or con. Where the subject matter is controversial all substantial representative points of view will be presented.

The degree by which the percentage classifications of the representative week and the proposed program schedule differ from the attached percentages filed by the licensee at the time it requested the assignment of license results primarily from the fact that no credit can be secured by the station for time devoted to educational and civic activities in the form of spot announcements. It is the opinion of the licensee that under present day

circumstances radio is most effective when its messages are reduced to timely and repetitive announcements. The effectiveness of this technique has long been accepted by the commercial advertisers who utilize radio, and it is the opinion of the licensee that the same benefits

can be brought to charitable, religious and educational institutions by the adaptation of the techniques of commercial advertisers. The experience of KRLA during the short time that it has operated under its present ownership has proved the effectiveness of this technique. As an example, KRLA conducted a saturation spot campaign in connection with the Advertising Council's Forest Fire Prevention Project. Forest fires prevention spots were carried 24 hours a day for a period of two weeks and were tied in with local conditions in Southern California where two serious forest fires had created extensive damage in recent weeks. The utilization of spot announcements on behalf of public service is scheduled by the Continuity Department with the same care and consideration as are spot announcements on behalf of commercial advertisers. Schedules for each of the various public service promotion campaigns are set up by the station so as to give assurance that each organization actually secures the number of announcements which it has been allocated. In keeping with its concept of saturation campaigns, the number of organizations that may be served within any given week is limited by the station to approximately six to eight organizations, and each of these organizations is then given saturation coverage. The time of these announcement campaigns is worked out in coordination with the agency so as to give them the coverage at a time when it would be most beneficial to the organization in question.

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[Rec'd. November 12, 1959 - F.C.C.]

EXHIBIT NO. 3

(November 10, 1959)

PROGRAM SCHEDULE

Monday thru Saturday

AM

5:50	Inspirational Message and Hymn of the Day	Rel.	LS/RS
5:55	News and Farm Report	N-Agr.	WS
6:00-9:00	THE PERRY ALLEN SHOW	Ent.	RC
	Including:		
	Crime Beat (1 in 3-hour segment)	PS	LS
6:15	Sports Line	Talk	LS
6:30	MidHour Headlines	News	WS
6:45	Weather Scope	Talk	LS
6:50	Inspirational Message	Rel.	LS
6:55	News	News	WC
7:15	Sports Line	Talk	LC
7:30	MidHour Headlines	News	WC
7:45	Weather Scope	Talk	LC
7:55	News	News	WC
8:15	Sports Line	Talk	LC
8:30	MidHour Headlines	News	WC
8:45	Weather Scope	Talk	LC
8:55	News	News	WC
9:00-12:00	THE ROY ELWELL SHOW		
NOON	Including:		
	Crime Beat (1 in 3-hour segment)	PS	LS

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9:15	Sports Line	Talk	LC
9:30	MidHour Headlines	News	WC

9:00-12:00 THE ROY ELWELL SHOW (cont.)

NOON

9:45	Weather Scope	Talk	LC
9:55	News	News	WC
10:15	Sports Line	Talk	LC
10:30	MidHour Headlines	News	WC
10:40	Housewives Buy of the Day	Agr.	LS
10:45	Weather Scope	Talk	LC
10:55	News	News	WC
11:15	Sports Line	Talk	LC
11:30	MidHour Headlines	News	WC
11:45	Weather Scope	Talk	LC
11:55	News and Market Report	N-Agr.	WC

12:00 Noon-

3:00 PM THE BOB COLE SHOW

Including:

Crime Beat (1 in 3 hour segment)

	Crime Beat (1 in 3 hour segment)	PS	LS
12:15	Sports Line	Talk	LC
12:30	MidHour Headlines	News	WC
12:45	Weather Scope	Talk	LC
12:55	News	News	WC
1:15	Sports Line	Talk	LC
1:30	MidHour Headlines	News	WC
1:45	Weather Scope	Talk	LC
1:55	News	News	WC
2:15	Sports Line	Talk	LC
2:30	MidHour Headlines	News	WC

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2:40	Housewives Buy of the Day	Agr.	LS
2:45	Weather Scope	Talk	LC
2:55	News	News	WC

3:00-6:00PM THE MICKEY SHORR SHOW

Ent. RC

Including:

Crime Beat (1 in 3-hour segment)

PS LS

3:15 Sports Line

Talk LC

3:30 MidHour Headlines

News WC

3:45 Weather Scope

Talk LC

3:55 News and Market Report

N-Agr. WC

4:15 Sports Line

Talk LC

4:30 MidHour Headlines

News WC

4:45 Weather Scope

Talk LC

4:55 News

News WC

5:15 Sports Line

Talk LC

5:30 MidHour Headlines

News WC

5:45 Weather Scope

Talk LC

5:55 News

News WC

6:00-9:00PM THE JIMMY O'NEILL SHOW

Ent. RC

Including:

Crime Beat (1 in 3-hour segment)

PS LS

6:15 Sports Line

Talk LC

6:30 MidHour Headlines

News WC

6:45 Weather Scope

Talk LC

6:55 News

News WC

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7:15 Sports Line

Talk LC

7:30 MidHour Headlines

News WC

7:45 Weather Scope

Talk LC

7:55 News

News WC

8:15 Sports Line

Talk LC

8:30 MidHour Headlines

News WC

8:45 Weather Scope

Talk LC

8:55 News

News WC

9:00-12:00

MIDNIGHT THE FROSTY HARRIS SHOW

Ent. RC

Including:

Crime Beat (1 in 3-hour segment)

PS LS

9:15 Sports Line

Talk LC

9:30 MidHour Headlines

News WC

9:45 Weather Scope

Talk LC

9:55 News

News WC

10:15 Sports Line

Talk LS

10:30 MidHour Headlines

News WS

10:45 Community Clndr.

PS LS

10:55 News

News WS

11:15 Sports Line

Talk LS

11:30 MidHour Headlines

News WS

11:45 Weather Scope

Talk LS

11:55 News

News WS

12:00 MIDNIGHT -

6:00 AM THE FRANK POLLACK SHOW

Ent. RC

Including:

Crime Beat (1 in 3 hour segment)

PS LS

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12:15 Sports Line

Talk LS

12:30 MidHour Headlines

News WS

12:45 Weather Scope

Talk LS

12:55 News

News WS

1:15 Sports Line

Talk LS

1:30 MidHour Headlines

News WS

1:45 Weather Scope

Talk LS

1:55 News

News WS

2:15 Sports Line

Talk LS

2:30 MidHour Headlines

News WS

2:45 Weather Scope

Talk LS

12:00 MIDNIGHT

6:00 AM

THE FRANK POLLACK SHOW (cont.)

2:55	News	News	WS
3:15	Sports Line	Talk	LS
3:30	MidHour Headlines	News	WS
3:45	Weather Scope	Talk	LS
3:55	News	News	WS
4:15	Sports Line	Talk	LS
4:30	MidHour Headlines	News	WS
4:45	Weather Scope	Talk	LS
4:55	News and Farm Report	N-Agr.	WS
5:15	Sports Line	Talk	LS
5:30	MidHour Headlines	News	WS
5:45	Weather Scope	Talk	LS

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AMSUNDAY

5:50	Inspirational Message & Hymn of the Day	Rel.	LS/RS
5:55	News and Farm Report	N-Agr.	WS
6:00	Religious Program (Music & Service)	Rel.	LS/RS
6:30- 9:00 AM	THE PERRY ALLEN SHOW	Ent.	RC
	Including:		
	Crime Beat (1 in 3 hour segment)	PS	LS
6:30	MidHour Headlines	News	WS
6:55	News	News	WS
7:15	Sports Line	Talk	LS
7:25	Report on Education	ED	LS
7:30	MidHour Headlines	News	WS
7:35	Inspirational Message	Rel.	LS
7:45	Weather Scope	Talk	LS
7:55	News	News	WC
8:15	Sports Line	Talk	LS

6:30-

9:00 AM THE PERRY ALLEN SHOW (cont.)

8:30	MidHour Headlines	News	WC
8:35	Inspirational Message	Rel.	LS
8:45	Weather Scope	Talk	LS
8:50	Sunday Traffic Report	PS	LS
8:55	News	News	WC

9:00-

12:00 NOON THE ROY ELWELL SHOW

Ent. RC

Including:

Crime Beat (1 in 3-hour segment)	PS	LS
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9:15	Sports Line	Talk	LC
9:30	MidHour Headlines	News	WC
9:55	News	News	WC
10:15	Sports Line	Talk	LC
10:20	Sunday Traffic Report	PS	LS
10:25	Report on Education	ED	LS
10:30	MidHour Headlines	News	WC
10:45	Weather Scope	Talk	LC
10:55	News	News	WC
11:15	Sports Line	Talk	LC
11:30	MidHour Headlines	News	WC
11:45	Weather Scope	Talk	LC
11:55	News	News	WC

12:00 NOON-

3:00 PM THE BOB COLE SHOW

Ent. RC

Including:

Crime Beat (1 in 3-hour segment)	PS	LS
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12:15	Sports Line	Talk	LC
12:30	MidHour Headlines	News	WC
12:45	Weather Scope	Talk	LC

12:00 NOON-

3:00 PM

THE BOB COLE SHOW (cont.)

12:55	News	News	WC
1:15	Sports Line	Talk	LC
1:25	Report on Education	ED	LS
1:30	MidHour Headlines	News	WC

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1:55	News	News	WC
2:15	Sports Line	Talk	LC
2:30	MidHour Headlines	News	WC
2:45	Weather Scope	Talk	LC
2:55	News	News	WC

3:00-6:00PM THE MICKEY SHORR SHOW

Ent. RC

Including:

Crime Beat (1 in 3-hour segment)	PS	LS
3:15 Sports Line	Talk	LS
3:30 MidHour Headlines	News	WC
3:45 Weather Scope	Talk	LC
3:50 Sunday Traffic Report	PS	LS
3:55 News	News	WC
4:15 Sports Line	Talk	LC
4:30 MidHour Headlines	News	WC
4:45 Weather Scope	Talk	LC
4:50 Sunday Traffic Report	PS	LS
4:55 News	News	WC
5:15 Sports Line	Talk	LC
5:30 MidHour Headlines	News	WC
5:45 Weather Scope	Talk	LC
5:50 Sunday Traffic Report	PS	LS
5:55 News	News	WC

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6:00-9:00PM THE JIMMY O'NEILL SHOW

Ent.

RC

Including:

Crime Beat (1 in 3-hour segment)

PS

LS

6:15 Sports Line

Talk

LC

6:30 MidHour Headlines

News

WC

6:45 Weather Scope

Talk

LC

6:50 Sunday Traffic Report

PS

LS

6:55 News

News

WC

7:15 Sports Line

Talk

LC

7:30 MidHour Headlines

News

WC

7:45 Weather Scope

Talk

LC

7:50 Sunday Traffic Report

PS

LS

7:55 News

News

WC

8:15 Sports Line

Talk

LC

8:20 Report on Education

ED

LS

8:30 MidHour Headlines

News

WC

8:45 Weather Scope

Talk

LC

8:55 News

News

WC

9:00-11:30 PM THE FROSTY HARRIS SHOW

Ent

RC

Including:

Crime Beat (1 in 3-hour segment)

PS

LS

9:15 Sports Line

Talk

LS

9:30 MidHour Headlines

News

WS

9:45 Weather Scope

Talk

LS

9:55 News

News

WS

10:15 Sports Line

Talk

LS

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10:30 MidHour Headlines

News

WS

9:00-

11:30 PM THE FROSTY HARRIS SHOW (cont.)

10:45	Community Clndr.	PS	LS
10:55	News	News	WS
11:15	Sports Line	Talk	LS
11:25	MidHour Headlines	News	WS
11:30	Religious Program (Music and Service)	Rel.	LS/RS
12:00	SIGN OFF		

Normal Length of Programs:

	<u>Minutes</u>
Inspirational Message	2
Hymn of the Day	3
News and Farm Report	5
Crime Beat	1
Sports Line	1
MidHour Headlines	0.75
Weather Scope	1
News	5
Housewives Buy of the Day	1
Community Calendar	3
Sunday Religious Programs	30
Report on Education	2
Sunday Traffic Report	1

[Rec'd. November 12, 1959 - F.C.C.]

EXHIBIT NO. 4

(November 11, 1959)

The station has used certain symbols on the logs which are not entirely indicative of the type of announcement carried, in accordance with the Commission's definitions. Steps have been taken to immediately revise the symbols so as to conform to the Commission's use of and instructions concerning such symbols in connection with program analyses.

In its logs the station has listed those announcements for which actual compensation was not received as "NCSA". While some of these announcements were non-commercial spot announcements in accordance with the Commission's definition, others were promotional announcements for sponsors or for station programs which may have been in part commercial, and accordingly such announcements have been counted as "Spot Announcements" in accordance with the Commission's definition. All of such announcements counted as "Spot Announcements" have been indicated by a red pencil check in the logs for the week October 18-24 (Exhibit No. 1).

In addition to the above-described announcements, the station carried announcements for which compensation was received which are indicated by the symbol "CSA" in the logs, and which are included, of course, in the "Spot Announcement" count.

The station carried numerous announcements for public service organizations and purposes which are labeled "PS" and are included in the counting of "NCSA" in accordance with the Commission's definition.

Of the total number of announcements listed on the logs as "NCSA" and "PS", 295 were public service announcements and 821 were announcements promoting the advantages of listening to Station KRLA. The balance of the announcements logged as "NCSA" have been classified as commercial under the Commission's definition.

With regard to the announcements promoted KRLA listening, there follows a brief description of each such type of announcement by name, as listed on the logs:

- | | |
|----------------------|--|
| "Secret Name": | A salute to advertising agency personnel; |
| "Record Shop Promo": | A salute to record dealers in the greater Los Angeles area in conjunction with the KRLA Top 50 Records; |
| "Telephone Promo": | A contest in which the station awards prizes on the basis of chance-selection of telephone numbers; |
| "Top 3 Contest": | A contest offering a prize to listeners who properly guess the top 3 songs on the upcoming KRLA Top 50 survey; |

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- | | |
|---------------------|--|
| "More Music Promo": | Announcements calling attention to the fact that KRLA carries more music than other area stations; |
| "News Tip Promo": | Announcements that KRLA will pay \$25.00 to the listener submitting the best news tip of the week. |
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FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D.C.

December 16, 1959

FCC 59-1267
81735

Eleven Ten Broadcasting Corporation
Radio Station KRLA
1401 South Oak Knoll Avenue
Pasadena, California

In Reply Refer To:
8419

Attention: Edwin V. Schulz

Gentlemen:

This is with reference to: (1) your application for renewal of license, as filed on September 2, 1959 and amended on September 30 and November 12, 1959; (2) the Commission's letter to you dated October 28, 1959; and (3) your amendment and response to the Commission's letter filed on November 12, 1959.

It appears from a review of the above documents and other pertinent information contained in the Commission's file on Station KRLA that you are not operating your station in accordance with the programming proposals made by you and considered by the Commission in connection with its approval of the assignment of license (BAPL-171) earlier this year. Additionally, a question exists as to whether you intended to carry out the representations made in your Statement of Program Service submitted with that application.

A review of the logs submitted by you for the week of October 18 to October 24, 1959 (as requested by the Commission's letter of October 28, 1959) indicates that you may have falsified the program logs for each of the seven days mentioned above by the addition of certain religious programming to the entries of other programs actually broadcast on those dates.

You were advised in the Commission's letter of October 28, 1959 that information had been brought to the attention of the Commission which indicates that on September 4, 1959, Station KRLA broadcast announcements by Perry Allen -- or someone purporting to be Perry Allen -- which stated that the listeners should look for Allen

in a Los Angeles restaurant and "identify" him so as to win \$9,000. You admit that on the date in question Allen was actually working for a station in Buffalo, New York. A question is raised as to whether your conduct of this contest constitutes an improper use of your facilities inimical to the public interest.

Your application and its amendments indicate that (with the exception of your seven disc jockey shows and 4 1/2 minutes of news preceding each hour) Station KRLA carries no programs of any kind other than "featurettes" which do not, on an individual basis, exceed one minute in length. You further propose to broadcast 2150 spot announcements and 400 non-commercial spot announcements in 120 participating hours per week. (This figure of 120 hours per week is in reality in excess of the time available for participating announcements since you propose to retain certain segments of your program time on a sustaining basis.) You state that "KRLA will not schedule in excess

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of a total of five minutes of participating commercial spot announcements within any 14 1/2 minute segment." Accordingly, it appears that questions are raised by these practices and proposals as to whether this programming meets the needs and interests of the listening area which you serve, and whether the programming is interrupted by spot announcements in a manner and to a degree so as to cause a deterioration in said service contrary to the public interest.

In inquiry conducted by the Commission indicates that Jack K. Cooke, a Canadian citizen, inaugurated the present programming format utilized by Station KRLA; that Jack K. Cooke has changed his residence to the Los Angeles area and is active in the day-to-day management of the station; that at the conclusion of the "Find Perry Allen" contest mentioned above, the "finder" telephoned KRLA and was referred to Jack K. Cooke who advised him to fly to Los Angeles with Allen "for a big publicity splash"; and that disagreements, arising out of Jack K. Cooke's participation in station operations, existed between him and

certain station staff members in matters of station policy and management. It appears that these activities constitute actual control of the station, by Jack K. Cooke, contrary both to the provisions of Section 310 of the Communications Act, and to the representations by Donald R. Cooke with respect to the ownership and control of the station made in your assignment application (BAPL-171).

The engineering portion of your renewal application (Section II) does not contain sufficient data to show that your new daytime pattern (with 50 kw operation) does not adversely affect the nighttime pattern, which is supposed to remain unchanged.

In light of all of the above, the Commission is unable to find, at this time, that a grant of your application would serve the public interest, convenience or necessity. It appears, therefore, that said application must be designated for hearing.

This letter is being written to you pursuant to Section 309(b) of the Communications Act of 1934, as amended, to afford you an opportunity to inform the Commission of any reason why the above application should not be designated for hearing. Any reply you wish to submit should be filed in triplicate within 30 days of the date of this notice. Upon receipt of any such reply, the Commission will determine whether it can grant your application without a hearing. If it is unable to so find, it will designate your application for a hearing on the issues then obtaining. In the absence of a reply from you concerning the matters discussed above, your application will be subject to

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dismissal pursuant to the provisions of Section 1.312 of the Rules.

BY DIRECTION OF THE COMMISSION

/s/ Mary Jane Morris
Secretary

* * *

Approved Commission Meeting, Renewal Agenda, Item No. 2,
December 16, 1959

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PIERSON, BALL & DOWD
ATTORNEYS AT LAW
Washington 6, D.C.

* * *

* * *

January 13, 1960

Miss Mary Jane Morris, Secretary
Federal Communications Commission
Washington 25, D. C.

In re: Eleven Ten Broadcasting Corporation
Reference 8419

Dear Miss Morris:

Reference is made to your letter of December 16, 1959, addressed to the above-entitled licensee to the attention of Mr. Schulz. Your letter requested a response within thirty days to various matters involving the activities of the station during the period September and October and raised a question as to what the Commission might anticipate insofar as future operation of the station is concerned.

A complete investigation has been made by Mr. Donald Cooke, principal stockholder of the licensee, of all of the questions posed by the Commission in its letter. Upon the basis of this examination, it is believed that each of the questions can and should be resolved in the favor of the licensee. However, it is the desire of Mr. Cooke to personally verify the information which will be submitted in response to the Commission's inquiry which he cannot do without spending an extended period in California. The pressure of other business matters and the intervening holidays have prevented Mr. Cooke from doing so prior to the present time, but he now plans to go to California as of the week of January 17. It is his intention not only to personally verify the information that has been forwarded by his staff but also to assume immediate supervision of the day-to-day operation of KRLA for such period of time as may be necessary to insure himself that the operation of the station is fully in accord with his responsibilities as a licensee. Mr.

Cooke will remain in California for as long as is necessary to establish that the operation of the station is in full accordance with his representations to the Commission. He will continue to personally supervise the day-to-day operation until he is satisfied that the operation and staff has become sufficiently stabilized to operate in a satisfactory manner in accordance with his desires and responsibilities as a licensee. By this it should not be implied that Mr. Cooke believes that KRLA has not operated in the public interest, but he acknowledges that the operation should not even give rise to questions however satisfactorily they may be answered.

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As indicated, it is believed that the information which is presently on hand would fully serve to answer the Commission's letter, but in view of the extreme gravity with which Mr. Cooke views the Commission's inquiry of December 16, he does not wish to submit a response until he has had a full opportunity to satisfy himself of the complete accuracy of all of the information that will be submitted by him. It is earnestly believed that a reasonable extension of the time within which the licensee shall submit a response to the Commission's letter of December 16 would serve the best interests of the Commission, the public and the licensee. This action will make it possible for the licensee not only to answer the questions raised by the Commission but to submit additional proof with respect to the past, present and future operation of KRLA.

It is, therefore, respectfully requested that the Eleven Ten Broadcasting Corporation be granted until February 15 to file a response to the Commission's inquiry.

If there are any questions in respect to this matter, please communicate directly with the undersigned.

Very truly yours,
PIERSON, BALL & DOWD
/s/ Thomas N. Dowd

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January 15, 1960

Thomas N. Dowd, Esq.
Pierson, Ball & Dowd
Ring Building
Washington 6, D. C.

8419
100629

Dear Mr. Dowd:

In accordance with the request contained in your letter of January 13, 1960, the time within which Eleven Ten Broadcasting Corporation (Station KRLA) may file its response to the Commission's letter of December 16, 1959 is extended from January 14, 1960 to February 15, 1960.

Very truly yours,
Mary Jane Morris
Secretary

* * *

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[Rec'd. Feb. 15, 1960]

DONALD COOKE, INC.
NATIONAL ADVERTISING REPRESENTATIVES
666 FIFTH AVENUE - NEW YORK 19, N. Y.
JUdson 2-2727

February 12, 1960

Miss Mary Jane Morris, Secretary
Federal Communications Commission
Washington 25, D. C.

In re: Your Reference 8419,
Eleven Ten Broadcasting Corporation
Pasadena, California

Dear Miss Morris:

In response to your inquiry of December 16, 1959, there is submitted herewith and as a part of this response additional information in the form of an amendment to the application for renewal of license. The attached information is in addition to the information previously

filed in the application for renewal of license as amended and our response of November 12, 1959.

Because of the questions raised with respect to the programming of KRLA, we have taken the liberty of submitting an amended Section IV based upon a recent week's programming of the station which reflects the manner in which the station is carrying out its original representations made to the Commission at the time it requested approval of the assignment of license (BAPL-171). We believe that an analysis of the attached Section IV together with the associated exhibits will indicate that KRLA is

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rendering a program service of outstanding interest to the area which I believe exceeds in performance the representations made to the Commission at the time it requested the Commission to approve the assignment of license.

The current programming reflects the application of the licensee's general program philosophy to the current situation. This of course is different from that which existed in November, 1958 and the licensee's knowledge of, and ability to serve, the area is also different. While it is not anticipated that the programming of KRLA can or should remain static in a dynamic market such as the Los Angeles area KRLA's general concept of service will remain the same. An example of change in needs is found in KRLA's broadcast of the Catholic Mass each Sunday which was inaugurated when another area station terminated a similar broadcast which it had carried for a number of years.

There is attached hereto and incorporated as a part hereof affidavits of William J. Wheatley and Edwin V. Schulz who served as Program Director and General Manager of the station during the period questioned by your letter of December 16, 1959. These affidavits respond directly to questions raised by your letter. In some instances, such as the notations made on the program logs of October 18 to October 24, 1959,

I have no personal knowledge beyond that which is contained in the affidavits. Upon the basis of my investigation, which included all personnel involved, I am convinced that there was no intention on the part of any station personnel, to mislead the Commission or misrepresent the facts. The action taken by

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the staff in making notations on the logs themselves reflected solely a lack of understanding of the Commission's rules and regulations in this respect. Insofar as the pending application for renewal and its amendments have indicated a change in the commercial policy of the station, I believe that the attached affidavits clearly show the progression that took place in the successive applications and amendments which led to this apparent change. While the language used in the last amendment was subject to the interpretation made by the Commission it was not so intended. As noted by the affidavits and enclosed Section IV, the basic policy of the station has never changed from that which was represented to the Commission at the time the Commission approved the assignment of license. The commercial policy of the Station as represented in that original application for the assignment of license has been followed during the period the station has been operated by Eleven Ten, and there is no intention to change or depart from that policy. The analysis and tentative conclusions made by the Commission as to manner in which KRLA would apply its commercial policy on participating announcements was apparently based upon a misconception, particularly insofar as it concluded that certain segments of commercial time would not be available for participating announcements. As shown by the attached affidavits, the computations were based upon the assumption that all commercial time might be utilized on a participating basis. The computations likewise assumed that a large number of spot announcements would continue to be of less than one minute in length. Our present practice, as evidenced by the enclosed program logs, is to utilize a

large number of spot announcements which are ten seconds or thirty seconds in length. Each of these have been credited as a full spot announce-

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ment in our program log analysis. At no time have commercial announcements adversely affected the program service of KRLA and the station shall not permit its service to deteriorate by virtue of an unwise or undesirable commercial practice.

I assumed control of Station KXLA, subsequently changed to KRLA, on May 1, 1959, pursuant to the consent of the Commission granted on March 25, 1959. Because of the pending construction of the 50 kilowatt installation, I continued the existing format of the station without substantial modification for a number of months, it being my intention and desire to initiate the proposed operation of Eleven Ten Broadcasting Corporation simultaneously with the utilization of the newly authorized 50 kilowatt facilities. In addition I believed it necessary to create a new staff who by background and experience could carry out the program format envisaged by me and represented to the Commission in the application for assignment of license. This program format incorporated ideas which I had accumulated in the course of my experience as a radio station representative, and to a substantial degree reflected knowledge secured from my brother, Jack Cooke, who has been an active broadcaster for a number of years. Many of my ideas reflected his experience obtained in the operation of CKEY-Toronto Canada, which station, among others, I represent.

In August of 1959, just prior to the inauguration of our 50 kilowatt daytime facilities, it became apparent that the steps which had been taken by my staff were completely inadequate and required major revisions. I do not place any blame or criticize any member of the staff for this situation. The fact remained however that I had a particular type of operation in mind which the staff had not been able to produce. I had scheduled a formal opening and

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the publicity and promotion plans were already in motion. Time was exceedingly short and fantastic progress had to be made if the station was going to meet its schedule. Under the circumstances I needed all possible available help and I asked my brother, Jack Cooke, to take over the reorganization of the program department which I deemed necessary. Pursuant to my request he agreed to participate on an active but entirely temporary basis. His primary responsibility was in the program department, a field in which I believed him to be eminently qualified. For a period of approximately three weeks, from August 20 to September 15, my brother Jack directed the affairs of the program department of KRLA. During this period of time he exercised some of the responsibilities that had previously been assigned by me to Mr. Wheatley, but all of the recommendations which he made with respect to program personnel were specifically approved or rejected either by me or my General Manager, Mr. Schulz. I am aware and appreciate that my brother's activities during this emergency may be subject to misunderstanding by virtue of the fact that he was the same person who helped make it possible for me to acquire the license of KRLA. Under the critical nature of the situation, however, I felt that the possibility of such questions was of less concern than the complete chaos which would otherwise have resulted. My need for my brother's temporary assistance was magnified by the fact that it was impossible for me to remain in California at that time. I returned to New York but continued to direct the station's operation thru almost daily contact with my manager and my brother both of whom reported to me and acted solely pursuant to authority given by me.

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The specific instance referred to by the Commission concerning a decision made by Jack Cooke took place on September 4th when Mr. Schulz was absent from the station and reflects a decision which in my

opinion would be made by any program director. I am well aware of instances where members of the staff disagreed with instructions given by Jack Cooke, which instructions were given pursuant to my decisions and with my approval. I had not then and do not now, intend to place station policy in the hands of the station staff although station management will be given the authority necessary to carry out the policies established by me.

To the best of my knowledge and belief my brother has not changed his residence to Los Angeles. While I do not purport to control his actions or his residence, I know that he has not been in California for several months. I do know that Jack Cooke has never been active in "the day-to-day management" except during the time discussed above and then only as to the degree indicated. He has never exercised control over the station. The representations made to the Commission that I would own and control the station were made in good faith, and have been, and will be fulfilled.

Insofar as the Perry Allen promotion contest is concerned, I have made as complete an investigation as the circumstances permit. For the most part I uncovered little beyond that reported by Mr. Schulz in his response of November 10, 1959. I confirm that the contest was conceived hurriedly and without prior legal examination. The announcements taped by Perry Allen on August 29, 1959 were not scripted but were ad-lib remarks by Allen on the same evening that he was hired by telephone. The balance

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of the announcements broadcast were made by the staff announcers from the clue sheets previously submitted by Mr. Schulz. These facts are not recited to excuse management of its responsibility but to explain the circumstances surrounding the contest which at worst represented inadequate consideration by management of a hurriedly executed promotion. The fact that the station did not exclude other station personnel

from those eligible to compete in a contest involving such a well known personality is perhaps the best proof of the lack of careful planning of this contest. Whatever the reasons may be, I cannot affirm or deny that some of the announcements may have indicated that Allen was at the time in Los Angeles, since the continuity is not available. I believe however that such an impression could well have been conveyed and to the extent that it was, it was contrary to the facts. My only justification is the haste with which the contest was conceived and aired. Suffice it to say, this will not happen again. Under our present operating policies all promotions and contests must be submitted to and cleared by counsel before they are broadcast. The same conditions apply to any copy or continuity with respect to which station personnel may have any question.

Eleven Ten has this date submitted an additional engineering report which I am advised fully meets the terms and conditions of the construction permit and establishes that the 50 kilowatt daytime pattern and the 10 kilowatt nighttime pattern are both operating in accordance with the conditions of the authority granted by the Commission. The engineering problems incurred by the station during the past months were far greater than had been antici-

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pated and contributed to the tremendous pressures under which the station personnel were operating. This was particularly true as of the first of September when we were endeavoring to secure authority to operate with our new 50 kilowatt daytime pattern.

It is hoped that the foregoing comments will enable the Commission to resolve any doubts it may have had as to the past activities of Eleven Ten. To the best of my ability, I have endeavored to furnish full and complete information so that the Commission can act favorably on the pending application for renewal. The uncertainties resulting from the current situation make it more difficult for station KRLA to operate efficiently and serve the public in the manner which I desire. I should

like to assure the Commission that as the licensee of this station I am aware of my privileges and responsibilities and shall do everything possible to fulfill these obligations.

Sincerely Yours,

ELEVEN TEN BROADCASTING
CORPORATION

By /s/ Donald Cooke,
President

* * *

[Jurat - Feb. 12, 1960]

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DRAFT #1 - Revised #1

February 5, 1960

Edwin V. Schulz

City of Los Angeles,
County of Los Angeles,
State of California

I, Edwin V. Schulz, being duly sworn do hereby depose and state as follows: that I am the General Manager of Radio Station KRLA, owned and operated by the Eleven-Ten Broadcasting Corporation. My first contact with Eleven-Ten Broadcasting Corporation came in the form of a letter of inquiry from Donald Cooke inquiring as to my availability for employment in a management position in the operation of KXLA, now KRLA. This letter led to several telephone calls between myself and Donald Cooke and culminated in my going to New York for the purpose of discussing the terms and conditions of employment. All of the correspondence and negotiations with respect to my employment took place between Donald Cooke and myself, and resulted in a contract dated August 1, 1959, which was transmitted to me under cover of the attached letter of June 16, 1959, attached as Appendix "A".

In accordance with my agreement I reported to Los Angeles on or about July 16, 1959 at which time Station KXLA was under the

supervision of Bill Wheatley who had been employed as Program Director.

I worked with Bill Wheatley in regard to reorganizing the station's staff and operation. I assumed primary responsibility for the business and sales organization and relied upon Wheatley primarily for the organization of the program department. During this period of time I was in constant communication with Donald Cooke, and I submitted to Donald Cooke a weekly report on all station activities. Examples of these reports are attached hereto as Appendix "B" and "C". In addition

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to these weekly reports I was in communication with Donald Cooke as the occasion required specific authorization on particular problems. I was advised by Donald Cooke to consult with his brother, Jack Kent Cooke, to whom he had introduced me in New York and who was then in Los Angeles, on any management problems on which I might like to have another opinion or independent evaluation. When a crisis arose in the program department in the latter part of August, Don and Jack Cooke assumed many of the duties normally handled by the Program Director. When Don Cooke was required to return to New York on urgent business matters, I maintained daily contact with Jack Cooke who continued to help in the work necessary to fulfill the new program format which had been selected for our 50KW operation. Pursuant to instructions from Don I accepted Jack as an expert in the field and I relied upon and valued his advice. At no time did I receive any orders from Jack Cooke. To the best of my knowledge and belief the only time that Jack Cooke assumed any responsibility for on the spot decisions was during the period of September 3rd and September 4th when I was absent from the station as a result of an automobile accident. At all times final policy decisions were made by Donald Cooke and management decisions were made by me pursuant to the authority vested in me by Donald Cooke. The period of time immediately preceding and following September 3, 1959 was

extremely chaotic and required management decisions to be made on the spot. The Perry Allen Contest and the copy used in connection therewith involved such an on the spot decision and did not reflect any long considered judgment or carefully prepared copy. The entire time from the employment of Perry Allen to the end of the contest on September 4 was approximately five days during which period all of the problems of a new operation were present.

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Insofar as the program material is concerned the application for renewal of license submitted to the Commission, dated August 14, 1959, was prepared by William J. Wheatley who was at the time Program Director of the station. The completed application was executed by Donald Cooke. The amendment to that application dated September 29, 1959 was prepared under my direction and supervision and forwarded to Donald Cooke for his signature. The amendment to the renewal application dated November 12, 1959, was prepared by me, and pursuant to the authority given me by Donald Cooke, was forwarded directly to the Commission because of the time element involved. In Paragraph 3B of the renewal amendment of November 12, 1959, I set forth my interpretation of the corporation's policies as originally submitted to the Commission in the application for assignment of license. The original policy stated that the "general practice and policy will be to limit spot announcements to one minute each, with not more than three minutes of commercial spot announcements in a 14 1/2-minute period. Reasonable departures from this maximum may be permitted in certain types of programs. . .". In the renewal application of August 14, 1959 Bill Wheatley refined and restated this policy in his own language to provide that the station "would not schedule any spot in excess of sixty seconds in length" and stated that "no 15-minute segment will have more than five spot announcements on a participating basis." It should be noted that this did not constitute a change in the basic policy since it was not intended

that all of the "five spot announcements" would be one minute in length. This statement also extended the time in question from 14 1/2 minutes to 15 minutes. In the amendment prepared by me on November 12, 1959 the statement that KRLA will not schedule in excess of a total of five minutes of commercial spot announcements in any 14 1/2 minute segment is not intended as a modification of the

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station's commercial policy but as a statement of what maximum deviation would be permitted under the general policy previously submitted to the Commission. It was my opinion that this did not modify the original representation made to the Commission which policy I neither intended or had authority to change.

Insofar as the computation of the total number of spot announcements that might occur in the future operation, this again reflected the maximum possibility which could possibly result in any extension during the future operation of the station. It was based upon a total operation of 163 hours, of which 88.28% might be commercial, as computed by me. This would give the station 144 quarter-hours of commercial programming. While at the present, our 12:00 Midnight to 6:00 AM hours are sponsored, my computation of future operation assumed that this sponsorship would not necessarily continue and therefore these hours were also included in computing maximum commercial possibilities. In computing the maximum number of spot announcements that might be carried by the station, the 2,150 commercial spot announcements represents an average of 3.73 spots per quarter-hour commercial segment including station breaks. It was to be noted that we included all station promotion announcements and courtesy announcements of the non-revenue type in the computation of spot announcements in the renewal application. It is to be noted further that many of the spot announcements in our actual schedule were less than one minute in length and that the reported number of 2,150 gave full consideration to the ten second identification announcement

as well as the one minute commercial. I did not believe then and do not believe now that the projection of this maximum possible number of spots was contrary to our original representations which, insofar as I could determine, had

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not given consideration to the promotional announcement which we have utilized so extensively on KRLA and which by definition must be counted as commercial.

When the 400 projected non-commercial spot announcements are added to the maximum possible commercial schedule and the sustaining hours are added to the commercial time, the overall average of spot announcements per quarter-hour would be 3.9. The increase in the number of spot announcements shown in the renewal application and the amendments thereto primarily reflected the fact that we were advised that we must count all promotional announcements as commercial spot announcements and that in practice we had determined that the short ten second and thirty-second announcement would be an important part of our operation in the Los Angeles market.

I should also like to reemphasize that the statement in Paragraph 3B of the November 12 amendment as to the scheduling of five minutes of participating announcements within a 14 1/2 minute segment was a statement of the maximum possible exception to the general policy. It had been my experience in other operations that this would or could occur in any station which as a general policy scheduled three minutes of commercial copy in a quarter-hour segment. The application of the general policy and its maximum exception is shown by Paragraph 3A of the same renewal application where our analysis of the logs for the week selected by the Commission showed that while the bulk of our 14 1/2 - minute periods had only one or two spot announcements that two quarter-hours during the week had five spot announcements.

Insofar as the logs for the week of October 18-24 show the addition

of "Thought for the Day" I accept full responsibility. There was no intention to

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mislead the Commission by the addition of these notations but in fact the additions were made to reflect what had actually taken place. The sequence of events which resulted in my instructions to make these additions was as follows: The broadcast of "Thought for the Day" as a regular feature commenced during the second week of October, 1959. Instructions were issued to the program department who carried out the instructions immediately by giving the necessary instructions to the announcers. Unfortunately the traffic department did not receive instructions to schedule these announcements on the program logs. When the analysis of the week of October 18-24 was completed, it was noted that that analysis did not reflect any religious programming which we knew to be contrary to the actual facts. Pursuant to my instructions the notation with respect to "Thought for the Day" was added to the program logs. No "on" or "off" time was indicated and the notation was not initialed or marked in any way to bring it in conformity with notations made or deleted at the time of broadcast all of which are verified by the announcer on duty. I have now been advised by counsel that such an addition to the log should not be made even though not intended to reflect an actual time of broadcast, but that this information should have been submitted to the Commission in the form of additional comments or notation elsewhere in the renewal form. My decision with respect to this matter was made without instructions from or advice to Donald Cooke inasmuch as I did not feel that it involved a policy decision. Neither I nor anyone in the continuity department were aware that the type of notation made violated any Commission rules or regulations and as indicated it was not intended to mislead or misrepresent

but was sincerely designed to reflect what actually had taken place during the period in question.

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/s/ Edwin V. Schulz
General Manager
Radio Station KRLA

[Jurat - Feb. 8, 1960]

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DRAFT # 2

February 10, 1960

William J. Wheatley

City of Los Angeles,
County of Los Angeles,
State of California.

I, William J. Wheatley, being first duly sworn do hereby depose and state that I was employed as the program director of radio station KXLA, subsequently KRLA, for a period beginning July 1, 1959, and terminating with the acceptance of my resignation on September 10, 1959.

My first contact with Eleven-Ten Broadcasting Corporation was in the form of a letter dated May 8, 1959, signed by Donald Cooke. Copies of this letter and the subsequent letters concerning my employment and duties are attached as an exhibit. Subsequent to the receipt of the letter of May 8, I telephoned Donald Cooke in New York and made arrangements to meet him. I met Donald Cooke in New York on May 16, 1959, and later the same day he introduced me to his brother, Jack Kent Cooke. The three of us discussed radio and radio programming. I spent the evening and had dinner with Donald Cooke, his wife and son, in Hartsdale, New York, returning to New York City that evening. The following day I met with Jack Kent Cooke and his wife, and discussed radio programming in general. He described to me the types of radio services available in

Los Angeles. We discussed how KXLA should be programmed.

I arrived at station KXLA on July 1, 1959, and pursuant to my instructions from Donald, contained in a letter dated June 19, 1959, I took over the duties of general supervision of the station in addition to those of program director. Under my general in-

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structions from Donald Cooke I proceeded to create a program staff which could put the proposed format for the 50KW operation into effect. In this effort I was given complete authority by Donald Cooke to hire and fire and to make such other management decisions as might be necessary to implement the new program format. One of the steps included the cancellation of commercial religious programs in accordance with the policy representations that had been made by Eleven-ten Broadcasting Corporation in its transfer application.

I arranged for the audition of on-the-air personnel and began hiring announcers and other program personnel. On or about July 15, 1959, the new general manager of the station, Ed Schulz, arrived in Pasadena. I had been advised of his employment by Donald Cooke and subsequent to his arrival he took over some of the duties which I had been exercising particularly with respect to the business end of the operation.

Between July 15, 1959 and August 20, 1959, the program staff, announcers and newsmen were all hired by me and had reported for work. On or about August 20, 1959, Donald Cooke, Jack Cooke, and Ed Schulz auditioned the new program personnel and format at the Pasadena studios. These auditions were live, and lasted from about 12:00 noon until 3:30 or 4:00 PM. As the auditions progressed I was told that most of the air personnel I had hired were unsatisfactory. We met again that evening and listened to tapes of other air personnel and telephoned those who were thought desirable for KRLA. Jack Cooke directed this search for new disc

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jockeys.

I prepared all of Section IV and the associated program exhibits for the KXLA renewal application dated August 14, 1959, which was signed by Donald Cooke. I had available to me the program information which had been filed with the Commission in connection with the application by Eleven-ten Broadcasting Corporation to acquire the license of KXLA. The statement in the renewal application in answer to Paragraph 3B of Section IV was written by me and reflected the original statement made in that section in the assignment application. The change in wording reflected that in practice some announcements would be less than a minute in length and that five announcements could be scheduled in a quarter-hour segment provided that the total commercial time did not exceed three minutes. There was no instruction to change the policy and no change of policy from that which had been previously represented to The Commission was intended or proposed.

During the period of time subsequent to the August 20th auditions, my duties as program director were assumed by Jack Cooke. I first submitted my resignation to Ed Schulz, as I recall, on or about August 22, 1959, and he told me that he would not accept it because I had been hired by Donald Cooke. I talked to Jack Cooke about the matter on or about August 22nd, and he agreed to talk to Donald on my behalf. Jack subsequently advised me that Donald would not agree to accept my resignation without a covenant not to engage in other radio broadcasting employment in Los Angeles or within 100 miles. I finally telephoned Donald Cooke

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personally on Thursday, September 10, 1959, and told him I had been offered a job as program manager of KPOP in Los Angeles. I also told him I would reveal no confidential information about the new program plans of KRLA and that the ideas I contributed for KRLA would remain

the property of KRLA. Donald then advised me that while he had been unwilling to accept the resignation previously, he would now do so. Pursuant to this understanding with Donald Cooke, I submitted a written resignation which was acknowledged and accepted by Donald Cooke.

/s/ Wm. J. Wheatley

[Jurat - Feb. 10, 1960]

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DONALD COOKE, INC.
NATIONAL ADVERTISING REPRESENTATIVES
666 FIFTH AVENUE - NEW YORK 19, N. Y.
JUdson 2-2727

June 19, 1959

Mr. William Wheatley
Radio Station WKY
500 E Britton Road
Oklahoma City 14, Oklahoma

Re: KXLA - Los Angeles, California

Dear Bill:

We have located a General Manager for KXLA but, as of the moment, he will not be able to start with us until July 27th. I am trying to get this moved up to July 15th but for the present it looks as though it will have to be the later date. I will keep you advised of this matter.

This is to advise you that Loyal King will be leaving KXLA July 3rd but he will meet with you and iron out any problems that may be inherent on your arrival on July 1st. I know Loyal will help you in every way possible.

This means, Bill, that for a period of two or three weeks, at least, you will have to take over general supervision of the station. I don't believe this will involve too much, if anything for the time being.

I am sure you will decide, along with Ed Schulz, the new General Manager, how you want to promote the increase to 50,000 watts.

Normally there will be a lot of teaser plugs used on the station, but you and Ed will want to decide when you want to start this teaser campaign. I think you should start to think about how to spend the promotional allocation as soon as possible.

When you arrive in Pasadena I feel you should sit down with Jack Reeder, Chief Engineer, and work out a temporary rearrangement of the present Control Room set up. This was discussed with Jack Reeder and he realizes a minimum amount of money is to be spent on rearrangements. This is most important, Bill, as I feel sure we will have the Los Angeles designation approved shortly but, unfortunately, not until well after our opening on September 1st. We intend to have a Sales Office in Hollywood with a direct temporary line between Pasadena and Hollywood.

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As previously mentioned, I am sure Loyal can help you in locating a home in the Los Angeles or Pasadena area. If anyone knows this area, Loyal certainly does.

Undoubtedly some changes will be made in dropping disc jockeys and replacing them. In any case your replacements will be hired at a lower salary than those you drop. Wherever possible I think you should avoid paying fees or commissions to announcers, they should be paid straight salaries. This is the usual procedure in Los Angeles and I think we would be crazy to deviate from it.

Kindest personal regards,

Donald Cooke

* * *

[Rec'd. Feb. 15, 1960 - F.C.C.]

AMENDMENT

The application of Eleven Ten Broadcasting Corporation for renewal of license of Station KRLA (formerly KXLA) Pasadena, California, File Number BR-1189, is hereby amended to substitute the attached Section IV and its incorporated Exhibits in lieu of the Section IV and associated exhibits now on file.

ELEVEN TEN BROADCASTING
CORPORATION

By /s/ Donald Cooke
President

[Jurat - Feb. 12, 1960.]

Broadcast Application		FEDERAL COMMUNICATIONS COMMISSION		Section IV																																												
STATEMENT OF PROGRAM SERVICE OF BROADCAST APPLICANT		Name of applicant Eleven Ten Broadcasting Corporation																																														
NOTICE TO ALL APPLICANTS																																																
<p>The replies to the following questions constitute a representation of programming policy upon which the Commission will rely in considering the application. It is not expected that licensee will or can adhere inflexibly in day-to-day operation to the representation here made. However, since such representation will constitute, in part, the basis upon which the Commission acts on the application, time and care should be devoted to the preparation of the replies so that they will reflect accurately applicant's responsible judgment of his proposed programming policy.</p>																																																
INSTRUCTIONS																																																
<p>1. Paragraphs 1 to 4 are divided into a left-hand column which pertains to past operation and a right-hand column which pertains to proposed operation. Applicants for new stations or assignees or transferees of existing stations are to fill in only the right-hand column while applicants for authorizations for renewal of existing station licenses are to fill in both columns.</p> <p>2. Program data on past performance are to be based on the composite week for the year preceding the date of application except in the case of renewal applications where the year preceding the expiration date of the existing license is to be used. The days comprising the composite week of each year will be designated by public notice on or about November 15th of that year.</p> <p>3. Program classifications incident to the replies to Paragraphs 2, 3, and 4 below, are to be in accordance with the definitions on Page 4 of this Section.</p> <p>4. Assignees or transferees filing FCC Form 314 or 315 need not complete paragraphs 5 or 8.</p>																																																
PAST OPERATION		PROPOSED OPERATION (for a typical week)																																														
<p>1. (a) State actual minimum weekly schedule of operation under the present authorization, giving opening and closing time and total hours for weekdays and Sunday.</p>		<p>(b) State minimum weekly schedule of operation proposed by licensee, permittee, assignee or transferee, giving opening and closing time and total hours for weekdays and Sunday.</p>																																														
<p>2. (a) State for the composite week the percentage of time which was devoted to each of the following types of programs (totals to equal 100%).</p> <p>Based on the week 1/31/60 to 2/6/60</p> <table border="0"> <tr> <td>(1) Entertainment (include here all programs which are intended primarily as entertainment, such as music, drama, variety, comedy, quiz, breakfast, children's, etc.)</td> <td>81.1 %</td> </tr> <tr> <td>(2) Religious (include here all sermons, religious news, music, and drama, etc.)</td> <td>2.5 %</td> </tr> <tr> <td>(3) Agricultural (include here all programs containing farm or market reports or other information specifically addressed to the agricultural population)</td> <td>2.7 %</td> </tr> <tr> <td>(4) Educational (include here programs prepared by or in behalf of educational organizations, exclusive of discussion programs which should be classified under (6) below)</td> <td>2.0 %</td> </tr> <tr> <td>(5) News (include here news reports and commentaries)</td> <td>8.9 %</td> </tr> <tr> <td>(6) Discussion (include here forum, panel and round-table programs)</td> <td>.3 %</td> </tr> <tr> <td>(7) Talks (include here all conversation programs which do not fall under Points (2), (3), (4), (5), or (6) above, including sports)</td> <td>2.5 %</td> </tr> <tr> <td>(8)</td> <td>%</td> </tr> <tr> <td>(9)</td> <td>%</td> </tr> <tr> <td>(10) Miscellaneous</td> <td>%</td> </tr> <tr> <td></td> <td>100</td> </tr> </table>		(1) Entertainment (include here all programs which are intended primarily as entertainment, such as music, drama, variety, comedy, quiz, breakfast, children's, etc.)	81.1 %	(2) Religious (include here all sermons, religious news, music, and drama, etc.)	2.5 %	(3) Agricultural (include here all programs containing farm or market reports or other information specifically addressed to the agricultural population)	2.7 %	(4) Educational (include here programs prepared by or in behalf of educational organizations, exclusive of discussion programs which should be classified under (6) below)	2.0 %	(5) News (include here news reports and commentaries)	8.9 %	(6) Discussion (include here forum, panel and round-table programs)	.3 %	(7) Talks (include here all conversation programs which do not fall under Points (2), (3), (4), (5), or (6) above, including sports)	2.5 %	(8)	%	(9)	%	(10) Miscellaneous	%		100	<p>(b) State the percentage of time to be devoted to each of the following types of programs for a proposed typical week of operation under the authorization requested (totals to equal 100%). Attach program schedule for this proposed typical week and indicate thereon the class of each program in accordance with paragraph 4(b). No substantial changes except as may be required to meet changing needs and conditions.</p> <table border="0"> <tr> <td>(1) Entertainment (include here all programs which are intended primarily as entertainment, such as music, drama, variety, comedy, quiz, breakfast, children's, etc.)</td> <td>%</td> </tr> <tr> <td>(2) Religious (include here all sermons, religious news, music, and drama, etc.)</td> <td>%</td> </tr> <tr> <td>(3) Agricultural (include here all programs containing farm or market reports or other information specifically addressed to the agricultural population)</td> <td>%</td> </tr> <tr> <td>(4) Educational (include here programs prepared by or in behalf of educational organizations, exclusive of discussion programs which should be classified under (6) below)</td> <td>%</td> </tr> <tr> <td>(5) News (include here news reports and commentaries)</td> <td>%</td> </tr> <tr> <td>(6) Discussion (include here forum, panel and round-table programs)</td> <td>%</td> </tr> <tr> <td>(7) Talks (include here all conversation programs which do not fall under Points (2), (3), (4), (5), or (6) above, including sports)</td> <td>%</td> </tr> <tr> <td>(8)</td> <td>%</td> </tr> <tr> <td>(9)</td> <td>%</td> </tr> <tr> <td>(10) Miscellaneous</td> <td>%</td> </tr> <tr> <td></td> <td>100</td> </tr> </table>			(1) Entertainment (include here all programs which are intended primarily as entertainment, such as music, drama, variety, comedy, quiz, breakfast, children's, etc.)	%	(2) Religious (include here all sermons, religious news, music, and drama, etc.)	%	(3) Agricultural (include here all programs containing farm or market reports or other information specifically addressed to the agricultural population)	%	(4) Educational (include here programs prepared by or in behalf of educational organizations, exclusive of discussion programs which should be classified under (6) below)	%	(5) News (include here news reports and commentaries)	%	(6) Discussion (include here forum, panel and round-table programs)	%	(7) Talks (include here all conversation programs which do not fall under Points (2), (3), (4), (5), or (6) above, including sports)	%	(8)	%	(9)	%	(10) Miscellaneous	%		100
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Broadcast Application	STATEMENT OF PROGRAM SERVICE	Section IV, Page 2																																																																																																																																																														
<p>3. (a) Dividing the broadcast week into 15 minute periods, specify below the number of 14½ minute periods within such 15 minute periods during the composite week in which were broadcast (exclusive of non-commercial spot announcements, call letter announcements and promotional announcements for sustaining programs):</p> <table style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <td style="text-align: center;">No. of 14½ minute periods</td> </tr> <tr> <td>(1) No spot announcements or commercial continuity</td> <td style="text-align: center;">78</td> </tr> <tr> <td>(2) One spot announcement</td> <td style="text-align: center;">125</td> </tr> <tr> <td>(3) Two spot announcements</td> <td style="text-align: center;">172</td> </tr> <tr> <td>(4) Three spot announcements</td> <td style="text-align: center;">134</td> </tr> <tr> <td>(5) Four spot announcements</td> <td style="text-align: center;">28</td> </tr> <tr> <td>(6) Five or more spot announcements</td> <td style="text-align: center;">4</td> </tr> <tr> <td> Total number of 14½ minute periods</td> <td style="text-align: center;"> 541</td> </tr> </table> <p>State the number of spot announcements (exclusive of non-commercial spot and call letter announcements, and promotional announcements for sustaining programs) broadcast during the composite week which exceeded one minute in length <u>None</u> (See definition of spot announcement)</p>		No. of 14½ minute periods	(1) No spot announcements or commercial continuity	78	(2) One spot announcement	125	(3) Two spot announcements	172	(4) Three spot announcements	134	(5) Four spot announcements	28	(6) Five or more spot announcements	4	 Total number of 14½ minute periods	 541	<p>(b) State what the practice of the station will be with respect to the number and length of spot announcements allowed in a given period.</p> <p>The general practice and policy will be to limit spot announcements to 60 seconds as a maximum with not more than three minutes of commercial spot announcements in a 14½ minute period. Reasonable departures from this maximum may be permitted in certain types of programs such as Shopping and Marketing Guides and personality shows, provided that commercial continuity is in good taste and in keeping with the type of program being presented.</p> <p>This is the same policy as originally adopted by the licensee, which policy has consistently been adhered to in KRLA's operation by the licensee.</p>																																																																																																																																															
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<p>4. In the tables below the percentages for each segment are to be computed on the basis of 100 percent of the operating hours within the particular segment for the seven days comprising the composite week (i.e., if full time operation, 70 hours for the 8 a.m. to 6 p.m. segment, 35 hours for the 6 p.m. to 11 p.m. segment, and the total weekly hours of operation between 11 p.m., and 8 a.m. for the third segment). The percentages in the column headed "Total" are to be computed on the basis of 100 percent of operating hours for the seven days.</p> <p>The exact number of spot announcements should be stated, including those broadcast within participating programs, but excluding call letter announcements (call letters and location) and promotional announcements for sustaining programs.</p> <p>NOTE: The purpose of the following tabulation is to enable the Commission to secure quantitative data as to the proportion of time (to be) devoted to the various classes of programs. The function of each class of program as part of a diversified program structure is discussed in the Commission's Report of March 7, 1946, entitled "Public Service Responsibility of Broadcast Licensees".</p>																																																																																																																																																																
<p>(a) State the percentage of time which was devoted to each of the following classes of programs during the composite week.</p> <table style="margin-left: auto; margin-right: auto;"> <tr> <th rowspan="2"></th> <th colspan="4">PROGRAM LOG ANALYSIS (in percentages)</th> </tr> <tr> <th>8 a.m.- 6 p.m.</th> <th>6 p.m.- 11 p.m.</th> <th>All other hours</th> <th>Total</th> </tr> </table> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">(1) Network commercial (NC)</td> <td style="width: 15%; text-align: center;">-</td> <td style="width: 15%; text-align: center;">-</td> <td style="width: 15%; text-align: center;">-</td> <td style="width: 15%; text-align: center;">-</td> </tr> <tr> <td>(2) Network sustaining (NS)</td> <td style="text-align: center;">-</td> <td style="text-align: center;">-</td> <td style="text-align: center;">-</td> <td style="text-align: center;">-</td> </tr> <tr> <td>(3) Recorded commercial (RC)</td> <td style="text-align: center;">77.7</td> <td style="text-align: center;">65.5</td> <td style="text-align: center;">68.</td> <td style="text-align: center;">71.6</td> </tr> <tr> <td>(4) Recorded sustaining (RS)</td> <td style="text-align: center;">2.5</td> <td style="text-align: center;">14.7</td> <td style="text-align: center;">18.3</td> <td style="text-align: center;">10.7</td> </tr> <tr> <td>(5) Wire commercial (WC)</td> <td style="text-align: center;">2.9</td> <td style="text-align: center;">3.7</td> <td style="text-align: center;">5.3</td> <td style="text-align: center;">3.9</td> </tr> <tr> <td>(6) Wire sustaining (WS)</td> <td style="text-align: center;">6.3</td> <td style="text-align: center;">6.0</td> <td style="text-align: center;">3.2</td> <td style="text-align: center;">5.2</td> </tr> <tr> <td>(7) Live commercial (LC)</td> <td style="text-align: center;">2.3</td> <td style="text-align: center;">1.8</td> <td style="text-align: center;">1.6</td> <td style="text-align: center;">2.0</td> </tr> <tr> <td>(8) Live sustaining (LS)</td> <td style="text-align: center;">8.3</td> <td style="text-align: center;">8.3</td> <td style="text-align: center;">3.6</td> <td style="text-align: center;">6.6</td> </tr> <tr> <td>(9) Total commercial (1+3+5+7)</td> <td style="text-align: center;">82.9</td> <td style="text-align: center;">71.</td> <td style="text-align: center;">74.9</td> <td style="text-align: center;">77.5</td> </tr> <tr> <td>(10) Total sustaining (2+4+6+8)</td> <td style="text-align: center;">17.1</td> <td style="text-align: center;">29.</td> <td style="text-align: center;">25.1</td> <td style="text-align: center;">22.5</td> </tr> <tr> <td>(11) Complete Total</td> <td style="text-align: center;">100%</td> <td style="text-align: center;">100%</td> <td style="text-align: center;">100%</td> <td style="text-align: center;">100%</td> </tr> </table> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">(12) Actual broadcast hours (per week)</td> <td style="width: 15%; text-align: center;">70</td> <td style="width: 15%; text-align: center;">35</td> <td style="width: 15%; text-align: center;">58</td> <td style="width: 15%; text-align: center;">163</td> </tr> <tr> <td>(13) No. of spot announcements (SA) (per week)</td> <td style="text-align: center;">545</td> <td style="text-align: center;">227</td> <td style="text-align: center;">205</td> <td style="text-align: center;">977</td> </tr> <tr> <td>(14) No. of non-commercial spot announcements (NCSA) (per week)</td> <td style="text-align: center;">158</td> <td style="text-align: center;">148</td> <td style="text-align: center;">127</td> <td style="text-align: center;">433</td> </tr> </table>		PROGRAM LOG ANALYSIS (in percentages)				8 a.m.- 6 p.m.	6 p.m.- 11 p.m.	All other hours	Total	(1) Network commercial (NC)	-	-	-	-	(2) Network sustaining (NS)	-	-	-	-	(3) Recorded commercial (RC)	77.7	65.5	68.	71.6	(4) Recorded sustaining (RS)	2.5	14.7	18.3	10.7	(5) Wire commercial (WC)	2.9	3.7	5.3	3.9	(6) Wire sustaining (WS)	6.3	6.0	3.2	5.2	(7) Live commercial (LC)	2.3	1.8	1.6	2.0	(8) Live sustaining (LS)	8.3	8.3	3.6	6.6	(9) Total commercial (1+3+5+7)	82.9	71.	74.9	77.5	(10) Total sustaining (2+4+6+8)	17.1	29.	25.1	22.5	(11) Complete Total	100%	100%	100%	100%	(12) Actual broadcast hours (per week)	70	35	58	163	(13) No. of spot announcements (SA) (per week)	545	227	205	977	(14) No. of non-commercial spot announcements (NCSA) (per week)	158	148	127	433	<p>(b) Show in the table below the percentage of time proposed to be devoted to each of the following classes of programs during a proposed typical week of operation.</p> <table style="margin-left: auto; 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Broadcast Application	STATEMENT OF PROGRAM SERVICE	Section IV, Page 3
<p>5. (a) Attach as Exhibit No. A the original or one exact copy of the program log for the seven days comprising the composite week analyzed in the preceding paragraphs. (If original logs are submitted they will be returned.)</p> <p>(b) What year's composite week has been analyzed in the foregoing paragraphs? Week of January 31-February 6, 1960</p> <p>6. Will the proposed station be affiliated with any network? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If the answer is "Yes", give the name of the network.</p>	<p>8. If this application is for an FM authorization, will the program of any AM station operating in the same area be duplicated? If the answer is yes, Not applicable</p> <p>(a) How many hours per day will be devoted to duplicated programs?</p> <p>(b) Call letters and location of the AM station</p> <p>(c) What kinds of programs (musical, sports, etc.) will be duplicated?</p> <p>9. State the average number of hours per week which will be used in advertising or promoting any business, profession or activity other than broadcasting in which the applicant is engaged or financially interested either directly or indirectly. If this is an application for renewal of license, show this data for the past license period also. Renewal period - none Past license period - none</p> <p>10. If the data furnished in response to the questions in this Section IV do not in the applicant's opinion adequately reflect station operation, attach as Exhibit No. a statement setting forth any additional program data that the applicant desires to call to the Commission's attention. (If the applicant feels that the program material classified in Paragraph 2 is susceptible of classifications other than those listed he may supplement Paragraph 2 with an explanatory statement in this Exhibit.)</p>	
<p>11. If this application is for a television authorization, will programs be broadcast in color? Yes <input type="checkbox"/> No <input type="checkbox"/> If "Yes", will programs be: Network <input type="checkbox"/> Local Live <input type="checkbox"/> Local Slide <input type="checkbox"/> Not applicable</p>		
<p>12. State applicant's general plans for staffing the station, including the number of employees in each department (i.e. program, commercial, technical, etc.), and the names, residence and citizenship of the general manager, station manager, program director and other department heads who have been employed or whom the applicant expects to employ.</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>General Manager - Donald Cooke, Hartsdale, New York</p> <p><u>Administrative Department:</u></p> <p>Station Manager - To be selected Secretary - 1 Comptroller - 1 Bookkeeper - 1 Total - 4</p> <p><u>Sales Department:</u></p> <p>Sales Manager - Armand Lamont 458 South Wetherly Drive Beverly Hills, California Salesmen - 3 Total - 4</p> </div> <div style="width: 45%;"> <p><u>Program Department:</u></p> <p>Production Director - Herb Heiman 335 So. Marengo Pasadena, Cal. Secretary - 1 News Director - 1 Newsmen - 3 Announcers - 7 Librarian - 1 Traffic & Continuity - 2 Total - 16</p> <p><u>Engineering Department:</u></p> <p>Jack Reeder, Chief 3561 Mountain View Pasadena, California Studio Supervisor - 1 Studio Engineers - 4 Transmitter Engineers - 4 Total - 10</p> </div> </div> <p style="text-align: center;">Total Personnel - 35</p>		

[Rec'd. Feb. 15, 1960 - F.C.C.]

EXHIBIT A

In preparing the composite week computations, the following facts were taken into consideration:

1. Agriculture - As indicated elsewhere in these exhibits, every newscast is scheduled to contain 30 seconds of agricultural news. In addition, weather reports aired over the station contain material of specific interest to the farmer. Therefore, one minute out of each hour's news and weather has been classified as agricultural. This is in addition to such specific farm programs as KRLA Farm Roundup, Best Buy, etc.

2. In computing spot announcements, those announcements which promoted the station's disc jockeys or their programs were classed as commercial spot announcements. Announcements promoting the station and its location were classed as neither commercial nor sustaining. Any promotional announcements containing the business or name of any advertisers were classed as commercial.

3. Several programs marked "LC" were five-minute sponsored segments of a recorded commercial program and have been so classified.

[Rec'd. Feb. 15, 1960 - F.C.C.]

EXHIBIT BADDITIONAL PROGRAM INFORMATION

Part 1 - Public Service Saturation Campaigns

Part 2 - Educational Programming

Part 3 - Discussion Programming

Part 4 - Religious Programming

Part 5 - Agricultural Programming

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KRLA EDUCATIONAL PROGRAMMING

KRLA will air programs of educational value to all levels of listeners. These shows will present information on controversial topics of practical nature and data of civic nature and responsibilities. These shows will be presented in good taste and surrounded by a professional aura. We intend to produce through our facilities and through the cooperative efforts of local business enterprises, high schools and institutions of higher learning, a rounded educational program.

Seminar:

Seminar is a 25 minute educational presentation heard each Sunday from 10:30 to 10:55 AM. It was initiated on KRLA January 31, 1960. Seminar is a college lecture series prepared by local universities in blocks of six to eight shows to be aired on successive Sundays. There follows a calendar showing the responsibility of Los Angeles City College for the shows through February 28, 1960 and in subsequent series for Seminar.

The purpose of Seminar is explained in the form presentation given to Southland colleges.

Topic Youth:

Topic Youth is a presentation of the KRLA Public Affairs Department to be aired from 9:00 to 9:30 PM Monday through Friday. It was initiated on KRLA during the first week of February, 1960. The enclosure explains fully the purpose and intentions of KRLA in airing Topic Youth.

California:

California was aired for five minutes nightly from 11:05 to 11:10 PM Monday through Friday beginning February 1, 1960. KRLA is co-operating with the California Institute of Technology (Mrs. Rose Blyth); Pasadena City College (Mrs. Kersting); University of Southern California (Dr. Harwood) University of the City of Los Angeles (Dr. Kingson and Hale Sparks). Each of these institutions under the supervision of KRLA is producing student presentations for airing. Beginning February 8,

1960 California will have as its guest educators prominent men in local industry. The series will be extended to ten minutes and will be heard from 11:00 to 11:10 PM nightly.

The primary purpose of the program is to "inform" and KRLA's Public Affairs Department will seek the best source of information on a variety of subjects directly related to scientific and industrial activities in the stations service area. While the purpose of the program will always be to educate it may not always be classified as "educational" since the production will not always be prepared by or on behalf of an educational institution.

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January 18, 1960

Very shortly Radio KRLA will introduce to the Southland scene a bright new educational series title "Seminar." Many of the recognized universities and colleges in the area will be participating in this weekly series. This twenty-eight minute thirty second show will be aired each Sunday between the hours of 10:00 - 11:00 AM.

Each institution will be responsible for a series covering a four to eight week period. The content of the show will be based on one of the recognized scholastic endeavors. For example, your school may want to devote two or three weeks to Science; one week to the Arts and still another to Journalism. If all departments are able they may each be responsible for one half-hour show in the series.

The program should be taped using your facilities or if necessary KRLA may arrange for taping the show here or doing it live. The only requirement we have upon the schools is that the content must be aimed at slightly above high school level and that no request for funds be made.

Serving an area from Santa Barbara nearly to San Diego, 50,000 Watt KRLA will broadcast your program to a possible 6 1/2 million

people. It is our hope that you will take advantage of our facilities and cooperate with KRLA to make "Seminar" a milestone for enthusiastic radio listenership.

For complete information, please contact:

Mr. Herb Heiman
Radio KRLA
1401 South Oak Knoll
Pasadena, California

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SEMINAR - COLLEGE DISCUSSION SERIES

1/31	Dr. Bernard Fischer	Things Move Fast In Electronics	Los Angeles City College
2/7	Prof. Valene Smith	Anthropology	Los Angeles City College
2/14	" " "	World Geography	Los Angeles City College
2/21	Secretarial Science	Business Trends	Los Angeles City College
2/28			Los Angeles City College
3/6			
3/13			Loyola University
3/20			
3/27			
4/3			
4/10			
4/17			
4/24			

TOPIC - YOUTH

Principals Fact Sheet

Date Received: _____

Date Submitted: _____

Please answer the following questions. If there are further remarks on any subject you wish to add, please do so. Include only information that you want aired on KRLA. If the questions do not cover material which you wish included, please supplement this questionnaire with a second page.

SCHOOL HISTORY

- a. Date founded _____ Date Opened _____
- b. First principal _____ Attendance _____
- c. Historical Interest _____
- d. Civic enterprises _____
- e. Past activities in athletic and scholastic competition _____

PRESENT STATISTICS

- a. Attendance _____
- b. Principal _____ Boys' _____ Girls' _____
- c. Name of student body officers _____
- d. Names of recognized organizations _____

DATES OF COMING EVENTS

- a. Prom _____
- b. Graduation date _____ Size of Class _____
- c. Campaign or drives _____
- d. Athletic and scholastic competition (Please include sports calendar if available) _____

RESULTS OF STUDENT ACTIVITIES

- a. Results of competitions to be arranged soon through you and your speech, Journalism and Sports Department
- b. Results of class elections in future semesters

PARENT TEACHER ACTIVITIES

- a. Meeting nights _____
- b. Officers _____
- c. Activities _____

Please also include any other available information you think may be of interest to our KRLA listeners.

Thank you for your participation in TOPIC - YOUTH.

MODERN RADIO LOS ANGELES
K R L A

January 27, 1960

A presentation of the KRLA Public Affairs Department, "Topic - Youth" is intended to further enlighten Southern California parents. Where do their youngsters go to school, who are their companions, student leaders, teachers and principals?

KRLA wants to answer these questions, plus many more concerning certain responsibilities of students and parents. Through the nightly presentation of "Topic - Youth" to be aired from 9:00 to 9:30 PM, it is hoped that both the youngsters and their seniors will be exposed to the following material:

- 1) Synopsis of school's history
 - a. When it was built and opened
 - b. The first principal and attendance
 - c. Historical interest
 - d. Civic enterprises
 - e. Past activities in athletic and scholastic competition
- 2) Present statistics
 - a. Attendance
 - b. Principal, Boys' and Girls' Principals
 - c. Names of student officers
 - d. Names of recognized organizations
- 3) Give dates of coming events
 - a. Proms
 - b. Graduation
 - c. Campaigns or drives
 - d. Athletic and scholastic competition
- 4) Results of student activities
 - a. Elections
 - b. Competitions

- 5) A portion will be dedicated to Parent-Teacher relationships and activities. The above information will be presented with a minimum amount of the regular KRLA music programming.

In addition to the actual presentation of "Topic - Youth" KRLA will open its studios for those members of the school selected for that night, for a guided tour and informative discussion about the functions of radio, its equipment and its place as one of the mass medias.

The presentation of this show will not involve the personal appearance of any members of the high school staff or student body and there is no contemplation of obtaining a sponsor for this show.

It is with a profound spirit of public service that KRLA dedicates "Topic - Youth."

KRLA DISCUSSION PROGRAMMING

KRLA intends to fulfill its obligations by airing a discussion show of high value both in content and professional preparation. We intend to cover topics important and controversial to the Southland through the use of our studios and remote facilities. Authorities whose statements may conflict or coincide, will, with the guidance of the KRLA Public Affairs Department bring to our listeners informative and topical data.

Whenever at all possible, both or all side of issues will be presented to the listeners. The KRLA Public Affairs Department will put forth every effort to see that all facets of the discussed topics are represented.

Scope Unlimited:

Scope Unlimited is a half hour taped discussion show presented by the Public Affairs Department and aired each Sunday morning from

10: 00 to 10:30 AM. Scope Unlimited made its first appearance on KRLA on Sunday, January 17, 1960.

Having voiced their opinions thus far are such prominent people as:

1. Mayor Norris Poulson, Mayor of Los Angeles City
2. Hugh M. Burns, President Pro Tempore of the California Senate & Chairman of the Senate Rules Committee
3. Admiral Cushing Phillips, Chairman of the Los Angeles Board of Public Works
4. Supervisor Frank G. Bonelli, Chairman of the Los Angeles County Board of Supervisors.

Slated for a broadcast within two weeks are California Senator Richards and Governor "Pat" Brown of California. Such topics for discussion are Senate Reapportionment, the Flu Epidemic, the slaying of a local youngster and soon the issue of conveying pornographic material through the mails.

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OFFICE OF THE MAYOR
CITY HALL

LOS ANGELES 12, CALIFORNIA

January 28, 1960

Mr. Donald Cooke, President
Eleven Ten Broadcasting Corporation
6381 Hollywood Boulevard
Los Angeles 28, California

Dear Mr. Cooke:

This is to thank you for your letter of January 25 to Mayor Poulson. It was thoughtful of you to send him a transcript of your January 17 program "Scope Unlimited".

Admiral Cushing Phillips is continuing to serve as president of the Board of Public Works, as the Mayor asked him to do. The Mayor has the fullest respect for the Admiral's ability and integrity.

The survey requested by the Mayor will fully explore the legal, financial, and operational aspects of the establishment, of an administrative aide position in the Board of Public Works, which handles a tremendous load of business for the City. The Mayor will base his recommendations on the findings of this study.

You may be assured that Mayor Poulson would recommend a change only if it were in the best interests of the city and fully in keeping with the Charter and all other legal requirements.

Sincerely yours,

/s/ David Janison
Press Secretary

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CALIFORNIA LEGISLATURE

SENATE

January 28, 1960

Mr. Donald Cook
President, 1110 Broadcasting Corp.
1401 Oak Knoll
Pasadena, California

Dear Mr. Cook:

It is my purpose in this letter to express my appreciation to your radio station for sending, for the purpose of an interview, Mr. Stall and Mr. McMillan.

This afforded me an opportunity to express my views relative to Senate reapportionment, this being not only a service to me but a service to your listeners. I do congratulate your station upon performing such a public service.

Sincerely yours,

/s/ Hugh M. Burns

KRLA RELIGIOUS PROGRAMMING

KRLA will fulfill its obligation to the community by airing messages of non-denominational character, religious services and programs of religious nature. Each show will have its own distinct properties; however, each must be presented in excellent taste. None will be sponsored or have any affiliation with a profit-making organization. None will ask for funds or attempt a conversion of the listeners' present spiritual beliefs. This is not to say that various religions cannot explicitly remind the listener what faith is presenting the show or service.

CATHOLIC HIGH MASS

Catholic High Mass was initiated on KRLA January 31, 1960. It is a 55-minute presentation, from 9:00 to 9:55 A.M. Sundays live from the Immaculate Conception Church, 1433 W. 9th Street, Los Angeles. This Church service is being aired exclusively by KRLA.

MORNING WORSHIP SERVICE

Morning Worship Service is a one hour live presentation originating from the Lake Avenue Congregational Church. It originated on January 31, 1960 and will be heard each Sunday morning thereafter. It will be aired exclusively by KRLA from 11:00 to 12:00 Noon on Sunday mornings.

RELIGIOUS NEWS REPORTER

The Religious News Reporter is a five minute live presentation aired each Sunday from 8:00 A.M. to 8:15 A.M. It began the 17th of January 1960. This summary of religious news from around the world is presented by Rev. J. Rex Smith of the Religious News Service, 43 W. 57th St., New York City. It is intended to keep listeners of KRLA up to date on news that involves, reflects on, or affects their religion.

ROSARY HOUR

The Rosary Hour is a fifteen minute transcribed presentation of the Catholic faith. It was initiated on KRLA January 31, 1960 and is being aired from 8:15 A.M. to 8:30 A.M. each Sunday. This is a program of prayer and sermon directed explicitly to KRLA's Catholic listeners. A purposeful cause and the prayer for world peace is the theme carried by the Rosary Hour.

THOUGHT FOR THE DAY

Thought For The Day is a 2 minute, 30 second presentation aired Monday through Saturday from 6:15 to 6:17:30 A.M. Initiated originally as KRLA's Word For The Day during the middle of October at 6:28 A.M. this presentation was changed to Unity's Thought For The Day on Wednesday, January 20. This is a daily inspirational message intended to help prepare the listeners' approach to a more spiritual new day. The proper relationship of man toward man and man toward God is the theme for Unity's Thought For The Day.

THE SOUND OF HIS MUSIC

This is a five minute religious music presentation aired Monday through Saturday at 5:50 A.M. and on Sundays from 8:00 to 8:10 A.M. This feature began on KRLA December 8, 1959. The music includes spiritual classics sung by such artists as Marion Anderson, Mahalia Jackson, The Mormon Tabernacle Choir, etc. This show is intended to help fulfill the need in the minds of KRLA listeners of placing the proper values on life as they begin each morning. The music is carefully selected to provide a varied and timely daily presentation.

SPIRIT OF TODAY

The Spirit of Today is a thirty minute presentation aired on KRLA from 8:30 A.M. to 9:00 A.M. each Sunday and a re-run from 11:30 to 12:00 Midnight Sunday night. It was initiated on December 5, 1959 and originally occupied the times from 6:00 A.M. to 6:30 A.M. and 11:30 P.M. to 12:00 midnight. Although the Spirit of Today's first presentations were produced cooperatively with KRLA and local Bible schools as participants, February 7, 1960 a new policy was put into effect. The three major religions are participating in an equitable rotating basis. The ratio is three to two to one, Protestant, Catholic, Jewish. The cooperating organizations are the Federation of Churches of Southern California (Dr. Clifton Moore), Los Angeles College of Jewish Studies (Rabbi Kleinman), and with the blessings of the Catholic Archdiocese (Father Laubacher) there are participating Catholic institutions.

[344-A]

Rev. Michael P. O'Sullivan
300 Norumbega Drive
Monrovia, California

Febr. 1, 1960

Radio Station KRLA
6381 Hollywood Blvd.
Los Angeles 28, Calif.

Dear Friends:

I listened in last Sunday morning to the broadcast of the High Mass from the Church of the Immaculate Conception in Los Angeles, and was very much impressed with the entire service. I called the switchboard in our local Maryknoll Hospital and asked the operator to spread the word to both nurses and patients on the various floors.

We are all most grateful to you for this fine public service you are rendering, not only Catholic people, but also those of other denominations-a soul-satisfying program on Sunday mornings. I am

especially happy that you were so kind as to make this hour (9-10) available. The sick are so much more alert at this hour than they were when the Mass came over at an earlier hour.

I am sure this thoughtful and generous action on your part will win considerable good-will from your audience. God bless your staff and prosper your Station.

Gratefully yours,

/s/ M.P. O'Sullivan

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2540-4th Avenue
Los Angeles 18, Calif.
Feb. 1, 1960

Radio Station K R L A
6381 Hollywood Blvd.,
Hollywood, California

Gentlemen:

It was with the utmost consolation and pleasure that I heard the CATHOLIC MASS broadcasted over your station from Immaculate Conception Church on Sunday, Jan. 31st, and I wish to thank you for the tremendous opportunity you permit your listeners in this spiritual program.

Being a semi-invalid, unable to leave my home, I appreciate more than words can estimate, the privilege of assisting at the Holy Sacrifice of the Mass in this manner at least. You are providing a great spiritual uplift and much consolation, especially to shut-ins, in making this wonderful broadcast possible, and I, for one - and I am sure, there must be many hundreds of others - bless you and beg God to bless your efforts to bring comfort and encouragement into the lives of others, particularly those unable to go to church to assist at the Holy Sacrifice of the Mass as they would wish.

Sincerely yours,

/s/ Maria Fiedler

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ARCHDIOCESE OF LOS ANGELES
1531 West Ninth Street
Los Angeles 15, California

February First
1960

Mr. Donald Cooke, President
ELEVEN-TEN BROADCASTING CORPORATION
6381 Hollywood Boulevard
Hollywood, California

My dear Mr. Cooke:

I have learned from the Right Reverend Monsignor Joseph J. Truxaw, of the public service program which you will render to the Church of the Immaculate Conception on Sunday mornings.

We are confident that this service will be most welcome to the ill and the shut-ins, and we confident that their prayers will be a rewarding gratitude to you for your generosity.

Praying God's blessings upon you, and with sincere best wishes, I am

Faithfully yours,

/s/

ARCHBISHOP of Los Angeles

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Church of the Immaculate Conception
1433 West Ninth Street
Los Angeles 15

January 25, 1960

Mr. Donald Cooke,
6381 Hollywood Blvd.,
Los Angeles 28, Calif.

Dear Mr. Cooke:

I want to confirm our arrangement for Sundays Broadcast High Mass over station K R L A - beginning Sunday January 31, 1959. And continuing from 9 to 9:55 A.M.

I am deeply grateful for the courtesy extended to us and for the bed ridden - who I know amount to thousands and are anxious to hear the Mass. It is such a consolation to them.

I remain

Yours sincerely

/s/ Rt. Rev. Msgr. Jos. J. Truxaw

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LAKE AVENUE CONGREGATIONAL CHURCH
393 North Lake Avenue Pasadena, California

January 27, 1960

Mr. Donald Cook, President
Eleven-Ten Broadcasting Corporation
6381 Hollywood Boulevard
Los Angeles 28, California

Dear Mr. Cook:

I want to express to you on behalf of our congregation and the official Boards our sincere thanks for the opportunity of broadcasting our morning service from 11:00 to 12:00 A.M. each Sunday morning. We hope that the program which begins this Sunday will be a continuing broadcast that will be mutually satisfying to you and the station and to the people who listen in. We feel it a great opportunity for us to broadcast this service.

The Lake Avenue Congregational Church has about eighteen hundred members and, I believe, is considered one of the leading churches of this area. When the city published a brochure portraying the life of Pasadena, our church was pictured among the leading churches. We feel that the life of the church is still on the increase and we look forward to an ever broadening ministry in the days to come.

This church is one of the leading churches in the National Association of Evangelicals which represents ten million Protestants, as well as a member of the Southern California Conference of Congregational Churches.

It was in the plant of the Lake Avenue Church that the Fuller Theological Seminary began which is now a very fine institution with several hundred students.

Therefore, I hope that it will be good, not only for your station, but also will broaden the ministry of our church in an ever widening circle to this area. Our sincere desire is to proclaim the comforting and helpful message that is found in Jesus Christ.

Very sincerely yours,

/s/ Raymond C. Ortlund

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THE ROSARY HOUR INC.

* * *

* * *

6060 Hollywood Blvd.
Hollywood 28, Calif.

January 26, 1960

Mr. Donald Cooke
President
Station KRLA
6381 Hollywood Blvd.
Hollywood 28, California

Dear Mr. Cooke:

I was very happy when your General Manager, Mr. Ed Schulz decided to air our program The Rosary Hour over KRLA on Sunday mornings at 8:15 starting next Sunday, January 31st.

We are on XEAK - "The Mighty 690" Monday through Saturday, which covers most of Southern California, but at the moment KRLA is our only Los Angeles outlet for the Broadcast in English. We also have it in Spanish.

I want to thank you for this wonderful privilege and I trust our association will be long, happy and beneficial to all concerned.

Enclosing a tear sheet from the local Catholic weekly.

With kind regards, I remain

Sincerely,

/s/ Rev. Peter J. Conroy

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ST. JOHN OF GOD HOSPITAL

* * *

2035 West Adams Blvd. - Los Angeles 18, Calif.

February 2, 1960

Radio Station KRLA
6381 Hollywood Boulevard
Los Angeles 28, California

Gentlemen:

I would like you to know how much our patients here appreciate the hour of radio broadcast from 9 until 10 a.m. on Sunday mornings. Many of our sick are permanently confined to bed and unable to attend services in our chapel and it is a great consolation to them to be able to hear these broadcasts. On their behalf and on behalf of the Brothers here who nurse them, we are most grateful.

Sincerely,

/s/ Br. Matthew, O.H.
Administrator

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KRLA AGRICULTURAL PROGRAMMING

KRLA will supply local produce, livestock, poultry and grain farmers with the following information daily.

1. Regularly scheduled current and five day weather forecasts.
2. Stock Exchange information appropriate to each of the above classifications.
3. Local and national farm news and reports.

In addition to the above KRLA will present to the housewives pertinent information regarding the best buys of the day for produce, poultry and eggs.

KRLA Farm Roundup:

The KRLA Farm Roundup is a fifty minute program aired each Monday morning from 5:00 to 5:50 AM. It made its first appearance on Monday, January 11, 1960. The Farm Roundup is a show composed of live and transcribed agricultural information and recorded music. The live portions include weather conditions and frost warnings; the latter specifically for each of the citrus crops. Complete weather forecasts for each of the agricultural districts are given by the announcer on duty. He also gives a weekend stock exchange roundup and pertinent local and national farm news. The transcribed portions include comments by:

Dr. C.M. Hardin, President, American Association of Land-Grant Colleges & State Universities, and Chancellor University of Nebraska.

Dr. J.W. Fitts, President, Soil Science Society of America, and Head, Dept. of Soils, N. Carolina State College.

Dr. G.F. Sprague, Pres., American Society of Agronomy, Research Agronomist, Agricultural Research Service, USDA.

Carl E. Rose, Pres., Nat'l Assoc. County Agricultural Agents in cooperation with the Farm Radio News Service and such persons as Edward Holter of the National Grange, Administrator Clarence Ferguson of the Federal Extension Service and Senator Eugene Mc Carthy of Minnesota plus many more in cooperation with the Farm Outlook for 1960.

Frosty's Frost Warning:

Frosty's Frost Warning is a two minute weather show aired three times nightly Monday through Saturday. The show was first heard on KRLA January 2, 1960 and each evening thereafter at 8:45, 9:45 and 10:45 PM. It is a complete weather report and forecast for each of the agricultural districts in the Southland. During Winter months

it will include specific frost information for each of the citrus crops. During the Summer months the show will bear a different title but still be a complete weather survey.

Agriculture in News:

Two newscasts a day will have the majority of their content devoted to farm news. They will be broadcast at 5:55 AM and 1:55 PM and will be 4 minutes, 30 seconds in length. This policy was initiated approximately in October, 1959 with the 1:55 PM report given at 11:55 AM. The change to 1:55 PM took place the week of January 18, 1960. A complete agricultural weather forecast is included in each of these newscasts.

Thirty seconds of agricultural news will be included in every newscast aired on KRLA. This policy was not strictly adhered to prior to Jan. 8, 1960; however, it has been fulfilled from that date on. The content includes pertinent local and national news developments that would interest local farmers and livestock breeders in the Southland. Stock, grain and poultry exchange prices are quoted daily.

Best Buy of the Day:

Once per day, Monday through Friday, between 11:30 and 11:45 AM the show the Best Buy Of The Day is aired. This sixty second presentation began October 15, 1959. Its purpose is to help Southland shoppers find what farm products arrive in Los Angeles in the greatest quantity and quality so they may better prepare their shopping list. This information is supplied by Mr. Chevland of the Federal State Market News Service. It is proposed that shortly, with his cooperation, KRLA will air two, four minute, thirty second shows direct from the Produce Warehouse in Los Angeles.

Agricultural Weather:

Agricultural Weather is a complete agricultural weather survey presented daily at 6:45 and 7:45 AM. It was initiated on January 2, 1960. This one minute weather picture is directed explicitly to farmers in each of the major farm areas in the Southland.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D.C.

In re Applications of	)	FCC 60-757
Eleven Ten Broadcasting Corporation	)	90104
Pasadena, California	)	Docket No. 13622
For Renewal of License of	)	File No. BR-1189
Standard Broadcast Station KRLA & Aux.	)	Docket No. 13623
For License to Cover Construction	)	File No. BL-7701
Permit (BP-11,700))	

ORDER

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 29th day of June, 1960;

The Commission having under consideration (1) the above-entitled applications, as amended; (2) the Commission's letter of December 16, 1959, sent to the above-named applicant pursuant to Section 309(b) of the Communications Act of 1934, as amended; and (3) the reply thereto filed by the applicant; and

IT APPEARING, That, in its letter to the applicant, the Commission notified it of the grounds and reasons for the Commission's inability to make the public interest finding required in Section 309(b) of the Communications Act before said renewal application could be granted; and that in its reply, the applicant set forth the facts and reasons why it believed that said application should be granted; and

IT FURTHER APPEARING, That, upon due consideration of the above applications, the Commission's letter of December 16, 1959, and the applicant's reply thereto, the Commission is unable to find that a grant of the said applications would serve the public interest; that, therefore, a hearing is required; and that no questions exist as to the qualifications of the applicant except as to the matters involved in the issues set forth below;

IT IS ORDERED, That, pursuant to Section 309(b) of the Communications Act of 1934, as amended, the above-entitled applications ARE DESIGNATED FOR HEARING, at a time and place to be specified in a subsequent Order upon the following issues:

1. To determine whether, in light of its operations since it acquired Station KRLA, the licensee's program proposals contained in its application for Commission consent to assignment of the license of Station KRLA (then KXLA) (BAPL-171) were made in good faith;

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2. To determine whether, in light of the manner in which the "Find Perry Allen" contest was conducted by Station KRLA in and about September, 1959, the licensee operated said station for improper purposes contrary to the public interest;

3. To determine whether the station's program logs for the week of October 18-24, 1959 were altered with the intent and purpose of deceiving the Commission;

4. To determine whether, since the date of assignment of license of Station KRLA (formerly KXLA) to the licensee, Jack K. Cooke, a Canadian citizen, has exercised control with respect to the operations of said station contrary to the provisions of Section 310 of the Communications Act of 1934, as amended, and the Commission's rules and policies promulgated thereunder;

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether a grant of the above-entitled applications would serve the public interest, convenience or necessity.

FEDERAL COMMUNICATIONS COMMISSION

/s/ Ben F. Waple
Acting Secretary

Released: July 5, 1960

APPLICANT'S
EXHIBIT 8

May 8, 1959

Mr. Bill J. Wheatley
Radio Station WKY
500 E Britton Road
Oklahoma City 14, Oklahoma

Dear Mr. Wheatley:

As you may perhaps know, I have just completed the purchase of KXLA-Los Angeles, which will be operating on 50,000 watts by August 1st 1959.

You have been highly recommended to me and I am most anxious to meet with you to discuss your qualifications. If you are interested, I would appreciate your calling me collect in New York at Judson 2-2727, or at my home in Hartsdale New York at White Plains 8-4146, by Tuesday May 12th. We can, at that time, arrange a personal meeting in New York, at your convenience, on May 16th, 17th, or May 18th.

I can assure you that the Program Director of KXLA will have complete charge of programming on this station. I can further assure you that this is a tremendous opportunity for the right man. We can go into more details on this later.

Sincerely yours,

Donald Cooke

Applicant's Exhibit 8
Continued

[405]

June 19, 1959

Mr. William Wheatley
Radio Station WKY
500 E Britton Road
Oklahoma City 14, Oklahoma

Re: KXLA-Los Angeles, California

Dear Bill:

We have located a General Manager for KXLA but, as of the moment, he will not be able to start with us until July 27th. I am trying to get this moved up to July 15th but for the present it looks as though it will have to be the later date. I will keep you advised of this matter.

This is to advise you that Loyal King will be leaving KXLA July 3rd but he will meet with you and iron out any problems that may be inherent on your arrival on July 1st. I know Loyal will help you in every way possible.

This means, Bill, that for a period of two or three weeks, at least, you will have to take over general supervision of the station. I don't believe this will involve too much, if anything for the time being.

I am sure you will decide, along with Ed Schulz, the new General Manager, how you want to promote the increase to 50,000 watts. Naturally there will be a lot of teaser plugs used on the station, but you and Ed will want to decide when you want to start this teaser campaign. I think you should start to think about how to spend the promotional allocation as soon as possible.

When you arrive in Pasadena I feel you should sit down with Jack Reeder, Chief Engineer, and work out a temporary rearrangement of the present Control Room set up. This was discussed with Jack Reeder and he realizes a minimum amount of money is to be spent on rearrangements. This is most important, Bill, as I feel sure we will have the Los Angeles designation approved shortly but, unfortunately, not until well after our opening on September 1st. We intend to have a Sales Office in Hollywood with a direct temporary line between Pasadena and Hollywood.

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As previously mentioned, I am sure Loyal can help you in locating a home in the Los Angeles or Pasadena area. If anyone knows this area, Loyal certainly does.

Undoubtedly some changes will be made in dropping disc jockeys and replacing them. In any case your replacements will be hired at a lower salary than those you drop. Wherever possible I think you should avoid paying fees or commissions to announcers, they should be paid straight salaries. This is the usual procedure in Los Angeles and I think we would be crazy to deviate from it.

Kindest personal regards,

Donald Cooke

Applicant's Exhibit 8
Continued

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ELEVEN-TEN BROADCASTING CORPORATION

DATE: August 7, 1959
TO: Donald Cooke
FROM: Bill Wheatley
SUBJECT:

From a program standpoint, today marks a milestone in KRLA's status. On this day our studio equipment will be ready to operate. The disc jockeys will begin rehearsing Monday, familiarizing themselves with the new board. Disc jockeys - Engineers - Newsmen - will all begin coordinated rehearsals on August 17.

Jim O'Neill from Pittsburgh, Wilson Hurst from Oklahoma City and Ken Barnes from Kansas City are "chomping at the bit" to get rolling. Frank Pollack has already started on the All Night Show, but not giving away any of our new operation.

Two of the old Disc Jockeys resigned and I am having to use some of the new people, using false names prior to our kick-off day. Charlie Williams and Jack Morris both resigned. Our staff is complete with the exception of one part-time newsman for week-ends, and I anticipate no difficulty in getting the right person for this job.

We are going to buy the Dallas jingles after all. Sande and Greene, here in Los Angeles read the fine print on their contract and discovered they could not produce jingles for any other Los Angeles station but KFWB. While this seems like a set-back, it will not slow us up in the least, and frankly, I am pleased, because I feared our jingles would sound just like KFWB's.

I completed resume's today on all of the disc jockeys. They will be given to the agencies on Tuesday for final preparation. Our initial pictures were also taken this morning, and they will be ready at 12:00 noon on Tuesday, to be delivered to the agencies. Our new program schedule is also complete and in the correct form for the final production.

Bobbie Tetzlaff, the PBX operator, has resigned, effective today, to accept another job, and we have decided to eliminate this position, using a new simplified telephone system, without a PBX. Virginia O'Laughlin, the traffic manager, leaves for two weeks vacation the 10th of August, and Janice Crosby, my secretary, and I will completely revamp the antiquated traffic system while she is gone. Our music department is ready to go.

We will be in recording sessions next week on our jingles, as well as our agency meeting, so with the traffic department, I figure it is going to be a pretty full week. I still need to finish the FCC renewal forms for the program department, and I hope to have this completed by Saturday, August 15. We will be ready for our programming any time after August 17, and can convert on a moment's notice if we so desire. Frankly, I am anxious to get started, and I am pursuing with Ed, the idea of starting our new programming earlier than originally set. Ed and I will keep you advised.

Page No. 2

We now have, for the first time, a continuity and production department and have set up a new workable system for the handling of live copy and transcriptions. The system went into effect Monday, July 27, and we have got the bugs out of it now to where we can handle a load of business without completely disrupting things.

I am sure you have known the terrible state of affairs this organization has been in, and the mere mechanics of setting up a radio station have seemed monumental at times. I am more confident than ever, at this point, that KRLA will be NUMBER ONE far within our first 6 months thinking.

Warmest, personal regards.

/s/ Bill
William J. Wheatley

APPLICANT'S
EXHIBIT 9

[418]

July 7, 1959

Grace Memorial Church
4544 Compton Blvd.
Los Angeles, California

Dear Sir:

In accordance with KXLA's application with the Federal Communications Commission in Washington, D.C., we will no longer be able to program in the religious category for commercial reasons. In accordance with this in the near future KXLA will institute a round-robin of broadcasts from the various churches, cost for which will be borne by KXLA.

Until such time as this new policy will be in effect, we must cancel your remote broadcast with the last broadcast occurring July 19, 1959.

We will be in touch with you at a later date concerning KXLA's plans for carrying religious programs. I shall be happy to discuss this with you at any time you so desire.

Sincerely,

/s/ B.J.W.

William J. Wheatley
Program Manager

Applicant's Exhibit 9
Continued

[419]

July 7, 1959

Mainger Club
11440 East Elliot,
El Monte, California

Dear Sir:

In accordance with KXLA's new policy we are canceling the broadcast from the Mainger Club, with no broadcast to occur after July 24.

I shall be happy to discuss this with you, if you so desire at your convenience.

Sincerely,

/s/ B.J.W.

William J. Wheatley
Program Manager

Applicant's Exhibit 9
Continued

[420]

July 14, 1959

Lincoln Avenue Church
Lincoln Avenue & Montana St.
Pasadena, California

Gentlemen:

In accordance with KXLA's application with the Federal Communications Commission in Washington, D.C., we will no longer be able to program in the religious category for commercial reasons. In accordance with this in the near future KXLA will institute a round-robin of broadcasts from the various churches, cost for which will be borne by KXLA.

Until such time as this new policy will be in effect, we must cancel your remote broadcast with the last broadcast occurring July 19, 1959.

We will be in touch with you at a later date concerning KXLA's plans for carrying religious programs. I shall be happy to discuss this with you at any time you so desire.

Sincerely,

William J. Wheatley
Program Manager

APPLICANT'S
EXHIBIT 16

[440]

May 8, 1959

Mr. Edwin V. Schulz
Radio Station KJAY
916 1/2 Kansas Avenue
Topeka, Kansas

Dear Mr. Schulz:

As you may perhaps know, I have just completed the purchase of KXLA-Los Angeles, which will be operating on 50,000 watts by August 1st 1959.

You have been highly recommended to me and I am most anxious to meet with you to discuss your qualifications. If you are interested, I would appreciate your calling me collect in New York at Judson 2-2727, or at my home in Hartsdale New York at White Plains 8-4146, by Tuesday May 12th. We can, at that time, arrange a personal meeting in New York, at your convenience, on May 16th, 17th, or May 18th.

I can assure you that the General Manager of KXLA will have complete charge of the operations on this station. I can further assure you that this is a tremendous opportunity for the right man. We can go into more details on this later.

Sincerely yours,

Donald Cooke

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[442]

K J A Y

Applicant's
Exhibit 16
Continued

Ed Schulz
General Manager

21 May 1959

Mr. Donald Cooke
Donald Cooke Inc.
666 Fifth Avenue
New York 19, N.Y.

Dear Don:

My thanks and appreciation for your most kind and generous interest in me. It was most delightful meeting with you this past weekend, and I'm both enthused and excited about the most challenging plans you outlined for Los Angeles.

As agreed, I will send you within the next week a complete presentation and outline of my thinking on KXLA, as well as a personal proposal on the matter of joining your team.

Till then . . . many thanks and kindest regards.

Cordially,

/s/ Ed
Edwin V. Schulz

Applicant's Exhibit 16
Continued

[445]

June 16, 1959

Mr. Edwin V. Schulz
Radio Station KJAY
916 1/2 Kansas Avenue
Topeka, Kansas

Dear Ed:

Enclosed please find your Employment Contract. I would appreciate your signing both copies and returning them to me in New York.

This will formally acknowledge my acceptance of maintaining premiums on a \$50,000 Key-Man Life Insurance Policy. This I understand, is to cost Eleven-Ten Broadcasting Corporation, \$300.00 per

year, for five years, based on the following arrangement as regards beneficiaries:

	<u>KXLA</u>	<u>Edwin V. Schulz Estate</u>
First Year	100%	
Second Year	75%	25%
Third Year	50%	50%
Fourth Year	25%	75%
Fifth Year	25%	75%

This Key-Man Insurance would be, at the end of the five year period, renegotiated between Eleven Ten Broadcasting Corporation and you.

I am also agreeable to an advance of \$3,000.00 which will be advanced against your share of the profits.

Any other additions to this Contract, I believe, would be superfluous and unnecessary. I don't believe there has to be any written agree-

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ment between us on vacations or policies, etc., for the simple reason, Ed, the General Manager will have complete supervision of the station and, as such, know what is best for himself and the success of the station.

I think you know me well enough to know I am honorable in every respect and anything we discussed will be carried out even though it is not documented. That you will have full power to carry out the duties of a General Manager, is understood.

I do want to re-affirm a basic understanding we have discussed three times and that is, Bill Wheatley will have complete charge of programming. I think you will find he is one of the most intelligent boys in radio. Personally I think he is the smartest programming man I have met in years.

I would like it very much if you could possibly, by any stretch of the imagination, work your way clear to an earlier date than August 1st. If this is not possible, we will start our association August 1st 1959.

Please let me know if you can spend a day or so in Los Angeles the week of July 6th?

Best regards

Donald Cooke

Applicant's Exhibit 16
Continued

[447]

K J A Y Inc.

* * *

* * *

June 19, 1959

Mr. Donald Cooke
Donald Cooke Inc.
666 Fifth Avenue
New York 19, N.Y.

Dear Don:

I am enclosing the signed employment contract, and would appreciate your sending me in return a signed copy or photostat of same for my files. As I mentioned on the phone, I firmly believe that such contracts are made to be filed away. For it is our mutual good faith and the desire to establish a warm and friendly working relationship that will in the long run establish a "contract" between us.

In the regard to the Key Man insurance, I will make arrangements to have this transferred to Eleven-Ten Broadcasting effective August 1. Also I would appreciate your sending me the advance against profits so that I may start cleaning up my affairs in Topeka and make arrangements for the move to California.

I am awaiting receipt of your letter outlining details for our takeover of KXLA. As soon as I have read it, I will start a comprehensive file of notes and plans for our meeting in Los Angeles the week of July 6th. Please let me know the date you wish to meet and where you'll be staying, and I'll make necessary arrangements to meet you there.

Don, I'm looking forward to a wonderful association with you and your organization. Your faith and interest in me will be met with complete loyalty and total effort on my part to insure our success.

With kindest regards,

/s/ Ed
Edwin V. Schulz

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EXHIBIT 17

Loyal King

cc Vern Dobson

Don Cooke

New York

May 19, 1959

Dear Loyal:

What follows will seem like a formidable memo. Actually, most of it, is simply confirmation or, in many cases, a recapitulation of what you and I discussed in Los Angeles. I felt it wiser to collate, in this one memo, all of the various things we talked about (that I can remember) rather than send you countless memos over the next week or two.

I just returned to New York a few days ago and will be off again -- interviewing men for the Program Manager's job, and so on. When I told you I would be back next week I had every intention of coming back but if I am to reach a good decision regarding a Program Manager and a Sales Manager, I must spend time interviewing now. This, as you know, involves a great deal of traveling and until I've

located the very best men for these two jobs I'll be occupied all over the country. Naturally I will let you know as soon as I have found the two "pots of gold" I am looking for. They must be top-flight men.

I've already interviewed two men, one a Program Manager the other a Sales Manager who appeal to me. However, I want to be sure that these are the best so I'll continue to examine every possible prospect.

There were a number of matters which I discussed with you (a few with Vern) which I would like to confirm now:

1. You are to notify Standard Rate & Data of the new rate card Number 11 which shows the rates to be effective September 1st 1959. I presume you will send this to them no later than July 1st 1959. This will give us ample time to change any classifications, or even rates, should we suffer a change of heart in the meantime.

2. Once we have decided to allow Standard Rate & Data to publish the new rate, we should then print our own new rate cards.

3. You are to prepare a draft of a coverage map of KXLA's 50,000 watts daytime coverage, and 10,000 watts nighttime coverage in which all of the cities in the area will be clearly defined along with, of course, the cities and towns of the area. I must confess I am not averse to the type of coverage map which KRKD prepared, a copy of which I enclosed for your consideration.

When I receive your draft I will add, in a suitable place on the map, all

market data such as population, retail sales, etc. If, at the time you prepare the draft you have these data available, you might include it.

4. Vernon Dobson gave me a list of the advertisers contracted for time on KXLA. It's two sheets in length. Is this the total list of contracts in force? I can hardly believe that this is all of the contracts on KXLA. However, if it is, please let me know. One item missing on

this list is that Vern does now show how many spots per week, or per day, or how many programs per week, or per day, the advertiser has contracted for. Would you ask him to fill in this information.

5. You will recall you were to write Broadcast Time Sales cancelling the representation contract on the grounds that the Pacific Coast Broadcasting Company was no longer operating KXLA and, therefore, Broadcast Time Sales has no rights vis-a-vis KXLA's representation. When I receive a copy of your letter to them I will then meet with the principles and settle the cancellation amicably and financially. Have you, in the meantime, received any word from them?

6. Jack passed on to me a map of the Los Angeles-Hollywood area in which the principle advertising agencies have been pin-pointed. This will be of help in choosing a business office centrally located to all of these agencies -- unless Tom Dowd is able to arrange to move our designation from Pasadena to Los Angeles. Should Dowd be successful, we will then be looking for 5,000 to 6,000 square feet of space in the Hollywood area to locate studios, offices, etc., (the whole setup) of KXLA.

7. I received a reply from Standard Rate & Data regarding my request that they remove the Pasadena designation. The most they will do is include KXLA in the Los Angeles listings without charge. Their letter infers we have been paying a modest fee for this privilege but when KXLA goes to 50 kw the fee will cease.

8. I have no doubt you executed the Broadcasting Year Book Questionnaire which I left with you.

9. We agreed we would not accept any renewals for religious programs. This is important. This is important in view of our plans beginning September 1st 1959.

10. I've received a memo from Vern estimating the cost of a full-time telephone line to the Pasadena studios from a proposed sales office in Hollywood, (if Dowd is unable to affect a change of designation at once) amounting to \$40.00 to \$50.00. Does this mean an installation charge, a yearly charge, a semi-annual charge, or a monthly charge? I presume it means a monthly charge.

11. Loyal, don't you think we should give notice to the live orchestra? It's costing us \$2,000.00 per month and there is no doubt in your mind, nor in mine, that we will not be using them after September 1st. The reasons you advanced for not discharging them is still valid. You will recall you feared

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a general upset on the part of the staff should you discharge the orchestra. You felt, and I agreed with you at the time, that the staff would be at "sixes and sevens" about the future.

But, on sober reflection -- and a great deal of it -- (I'm referring to the reflection, not the sobriety) I believe that our staff must suspect we propose to adopt a different program format in the future. Retention of the contract with the orchestra is a camouflage too thin to fool them and, as I say, it's costing a great deal of money with no hope of a return of investment in the form of a reward of any kind in the future. I well understand why, with the western format, you employed a live orchestra. It has been an important part of your organization for the present and for the future; but with what we are stepping toward on September 1st, as you know, it ceases to be a form of investment for the future and becomes an out-and-out expense with no hope of a future return.

I know you will give this your earnest consideration. I do hope you feelings will parallel mine.

12. I spoke to George Sternberg, who is Dr. Roslow's Assistant in Pulse Incorporated. I expect to be meeting with Roslow on my return to the city the early part of next week and will report on my progress at that time.

13. I have completed my check of advertising agencies here in New York with respect to the attitude they have toward Hooper, Pulse, and Neilson. Very roughly it would break down this way:

Agencies accepting Hooper -- about 10%

Agencies accepting Pulse -- about 85%

Agencies accepting Neilson -- about 60%

The reason that the percentages total more than 100% is, of course, that many of the agencies accept two of the services, and a few of them accept all three of the rating services.

14. As I recall, the Neilson service costs KXLA \$164.00 per month. The Confidential Pulse Survey is \$75.00 per month. If we are to subscribe to the full published Pulse Survey, it will cost us \$250.00 per month. Are these figures correct?

15. We agreed that KXLA would not contract for any new business, at the old rate, after midnight August 31st. Beginning September 1st 1959 all new contracts must be at the new rate. We agreed there would be no exceptions to this rule and I know I will have your full cooperation on this.

In the meantime (and of course this applies after September 1st also) please do not allow the salesmen to accept any contracts at less than card rate. Our rate card is to be our bible and there will be no infractions of the commandments. I thank you in advance for your close attention to this.

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16. I am grateful for the listing of advertisers with which your monitoring service provides for KXLA of the advertising being broadcast by competitors in the Los Angeles area. I will continue to be grateful if you will send me copies of this information as you receive it. I will, in turn, provide our other national offices with copies of the information that is relevant to their offices.

17. As promised, I sent you a complete list of all our offices and managers. All national billing will be through Donald Cooke Incorporated here in New York. The managers of my other offices cover not only New York, but Boston, Baltimore, Philadelphia, Detroit,

Chicago, St. Louis, San Francisco, Seattle, and Portland, Oregon, which will no longer make it necessary for the sales staff of KXLA to travel to these points to sell national, or regional, business. A note to any of our offices in New York, Chicago, or San Francisco will produce prompt sales service.

18. I have promised to send to Vern a form budget and P & L Statement together with a complete description of each. I am including them with this memo.

19. When Vern receives the budget form and analysis will you please see to it that he fills it in with the information required. This budget form will apply only to the months of May, June, July, and August. Well before September 1st, you and Vern and I will prepare a new budget for the new type of operation. The budget which Vern will prepare for May through September 1959 will simply be an interim budget to help guide us through these next four months. At this moment I have already prepared the follows;

- a. Accounts Receivable Forms
- b. The Budget Forms
- c. The Budget Analysis Forms
- d. Cash Position Reports

I expect to have completed the weekly sales report form, and any other forms which may be helpful, in the next few days.

Before leaving Los Angeles I instructed either Vern or Jack (I forget which) about writing the signing officers for Eleven Ten Broadcasting. I understand Vern has looked after this matter. I believe Jack is following a similar plan for Broadcast Equipment.

20. All leases and documents (other than those in the possession of Bud Pentz) are now with John Roggeveen, one of the senior partners of Arthur Young & Company, our auditors. If Vern needs any specific information which is contained in these documents, he need only call Roger Murphy, of Arthur Young, and Murphy will acquaint him with the information Vern is seeking. By the way, I am very well pleased with the work Arthur Young is doing for me. They are top flight auditors.

While on this subject, I see no readon for me, in behalf of Eleven Ten Broadcasting, to remain with Bud Pentz. I, too, am not too happy with his services. I believe I'll transfer to O'Melveney & Myers as Jack has already done.

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21. I've already told Vern -- and you and I discussed it -- on September 1st and thereafter no cash discounts will be allowed to any advertiser. Incidentally, of course, there will be only one rate card for KXLA and no local rate card. Vern has provided me with all the information regarding the cost of a Blanket Position Bond. I will be back to you on this subject in the very near future.

22. I understand that Vern has already cancelled all present promotional advertising. As I recall it amounted to a saving of almost \$1,200.00 per month.

Beginning early in August we will embark on a full scale promotional campaign regarding the new 50,000 kw power, the new programming, etc., etc.

23. I know I can count on you not to disclose to anyone, even roughly, the programming plans I have in mind. It is terribly important to the success of this venture that my plans be given absolutely no publicity. These plans must be kept in the strictest of confidence. The public, the advertising world, and the competitive radio stations, must not have a glimmer of my programming proposals. I want the new "sound" of programming to come as a surprise to everyone. I know I will have your active and full cooperation on this.

24. When I last spoke to Armond Lamont regarding the Robert Hall contract with KXLA, which was entered into I believe, February 22nd 1959, and which has yet to start, I told Armond that I would see Jerry Bess in New York regarding a starting date and I will do this too. However, before I do I can't find in our rate card any reference to a rate of \$8.50 per announcement. The lowest spot rate I can locate is

the 1000-time rate of \$9.25 per announcement. Before I see Bess, would you ask Armond to drop me a note informing me how we arrived at this rate so I'll be properly armed.

Incidentally, I've run across a few other rates that I, at this distance, cannot reconcile with our rate card. A quick perusal of the list of contracts Vern gave me will indicate the ones in question. I'm sure you can put me straight on these quite easily.

Again, I want to thank you for all your cooperation and I want to let you know I enjoyed meeting you very very much. I look forward to what, I believe, will be the warmest and friendliest association.

Kindest personal regards,

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June 18, 1959

Mr. Loyal King
Radio Station KXLA
1401 South Oak Knoll
Pasadena, California

Dear Loyal:

Thank you for your letter of June 15th, and your attention to the Ryfle and Williams' contracts.

In view of your feelings, which I can well understand Loyal, I will bow to your repeated requests and - with a great deal of reluctance - terminate our pleasant business association as of July 3rd.

If you would do me just one more favor I would appreciate it no end. Please remain, Loyal, until Bill Wheatley's arrival on July 1st. Bill will be arriving with his wife on either June 29th or June 30th and I am very hopeful you will be able to help him with the Real Estate problem. Anything at all that you can do on this will be greatly appreciated by me and I know by Bill too.

All your suggestions have had my deepest consideration and I know you are right in that we should have an aggressive staff. With this in mind, I am pleased to announce we have located a real top-notch General Manager who will take over a few weeks after Bill Wheatley arrives. I propose to have three salesmen including Armond Lamont.

I intend to make an abrupt change in KXLA's programming with an entirely new format following a large-scale promotional campaign which will become effective Tuesday September 1st 1959. I know you will keep this confidential, Loyal.

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You will never know what a tremendous help you have been to me, personally, Loyal and it gives me a great deal of satisfaction to have known a person who is so thoughtful and kind as to have stayed on even though his heart wasn't in it.

I am looking forward so very much to seeing you again.

Kindest personal regards,

Donald Cooke

Applicant's Exhibit 18

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DONALD COOKE, INC.

Inter-Office Correspondence

Bill Wheatley
Ed Schulz

From: Don Cooke

June 1959

New York

Re: Typical Program Schedule

Dear Bill and Ed:

I am enclosing a copy of the preamble to the program schedule along with a copy of a typical program schedule as submitted to the FCC. Please note that the following amendments have already been made to the enclosed program schedule:

1. News at 8:00 am will be five minutes - not ten minutes as shown.

2. Five minute sportscasts shown at 8:10 am, 12:35 pm 6:05 pm, 10:35 pm, will not be broadcast at that time and they will not be five minute sportscasts. These will be, preferably, sports capsules or bulletins once an hour throughout the twenty four hour schedule, Monday through Saturday. These sports capsule should be roughly one and one-half minutes in length and should be scheduled at a regular time each hour. Capsule should be basically scores of games in season and any headline items which occur relating to sports.

3. News will be heard on the hour (five minutes) and on the half-hour (headlines only, lasting approximately 45 to 60 seconds). The newscasts scheduled for 12:30 pm will not be broadcast as a five-minute newscast. It will be a regular news headline. The five-minute newscast scheduled for 10:30 pm will be a news headline only. It will not be a five minute newscast.

4. The Town Crier and Town Hall programs scheduled for 10:40 pm and 10:45 pm respectively will be re-scheduled as follows:

Town Crier	10:45 pm
Town Hall	10:50 to 10:59 pm

5. In all cases where the newscasts are identified as news and farm report, the description as indicated in the foreword under Agriculture, the farm report substance in the

newscast will be confined to a "bulletin highlighting farm market prices, etc."

6. On the Sunday schedule where ten-minute newscasts or commentaries are scheduled, these newscasts will, of course, be five minutes in length.

7. On Sunday, where five-minute sportscasts are shown, these will not be scheduled. Sportscasts on Sunday will be capsule or bulletin type as they are on Monday thru Saturday.

Many other changes will be made but we can only hope to execute, beginning September 1st, a program schedule on KXLA similar to that which we submitted to the FCC. It will be closely related to the one submitted to the FCC, but it cannot be identical.

Please let me have your thoughts on this programming.

Best regards,

PS - Bill: I am having sample jingles sent to you at KXLA from the Jingle Mill here in New York along with their prices. Please let me know what you think of them.

Monday, 3 August 1959

From : Ed Schulz

To: Don Cooke

Dear Don:

Don, the past two weeks have been among the most hectic I have ever spent. It was wonderful being with Jack Cooke again, and he did a yeoman job in getting Bill and I off on the right foot and the right track. That man is simply inspiring to work with. He has the ability to cut clear through to the heart of any matter.

Now that our approach has been set up, I must advise you of one simple but most important fact, Don. My little KJAY in Topeka looks like WCBS in New York in comparison to KXLA. I must hasten to add here that while Loyal King is certainly a grand person and a wonderful man, a radio manager he is not. And after 18 years of mismanagement, KXLA, its facilities, and its administration are in a hell of a shape. I'm sure you are aware of these factors. But the tangled mess has been a big hinderance to both Bill Wheatley and myself. For the first two weeks, both Bill and myself spun our gears just trying to find out basic information like who was on the air, and what the billing was.

The only basic solution to this is an entirely NEW STAFF--and this we shall have. For example it took almost all of my entire day last Friday to figure out billing on agency commissions. Can you imagine a station paying not one but two commissions to two agencies on the same piece of business, and then paying a sales commission besides? Sounds incredible, doesn't it? But it's been going on for years here. I give this as just one small example of the basic organizational and administrative problems we have been facing here.

Now, Don, I don't want you to think for one minute, that I'm going to make a habit of complaining, for these are not complaints, and from here on in, I'm not the least bit interested in KXLA, my only concern will be a new radio station called "KRLA", which is going to be the greatest operation on the west coast. But please remember that Bill

and I have had no base to build upon; we've had to start from scratch on everything.

Now, I'll take each phase of the operation department by department and give a short precis of what has been accomplished so far, and where we stand.

ACCOUNTING: I can imagine your disappointment in the budget work done by Vern Dobson, and here is the reason why it has turned out this way. Vern is running an accounting department along 1898 lines. For example, he simply doesn't know what the daily billing is. They count the day's logs, and post the accounts on ledgers, with no provision for making a day's total, and a running billing total for the month. For example, on the 18th of the month, you should know exactly how much has been billed on the station to date.

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This is one of the reasons Vern is having such a tough time getting the Weekly Sales Reports out to you, for he simply doesn't know what was billed one week ago on the report. To find this out he and his girl have to pull out the invoices from a month one year back, and go back and figure that particular weeks billing. This is the only way it can be done, unless they count the logs for the week a year ago, and somehow or another, no one can ever find those. I have instructed Vern to use an average figure from now on for the weeks billing a year ago on the sales reports. In other words, for the third week in August, they will take the total billing for August a year ago, divide by 4.3, and give you an average figure.

You can also imagine how difficult it is to gather the figures for the current week on the weekly sales report, since they keep no cumulative billing figures. I have set up a new system of counting the log and posting the billing effective the first of August. From now on we will keep cumulative billing figures and the Weekly Sales Report will be much easier to do. Actually it is a great report, and shouldn't take over 30 minutes to compile each week, if the proper information is available.

Now as for the budget, I must admit, that I was aware of the errors you mentioned in the letter, and I am in the process of completely re-doing the budget myself, both as to format and layout, with a system of account numbers, plus a detailed breakdown of each account, so that if you want to find out how much we spent on postage last month, and what's budgeted for sealing wax next month, you can do so easily, and logically.

Actually, Don, one of the big problems with Vern Dobson, is the simple fact that he is running scared. He really believes that with every mail delivery you are going to send him his notice. He is scared to death of me also, and I spent last Friday noon taking him to lunch to calm him down. Now, my estimation of the man is that he is a good competent accountant, provided he has the proper direction, and provided that everything asked of him is laid out in full and complete detail beforehand. Another problem is the fact that his department is disorganized and poorly staffed. If you can imagine, Vern has to do a lot of the day to day posting in ledgers, buying of supplies, and simple routine typing in the office. Actually a comptroller should be responsible for preparing the budget, and carrying it through, analyzing costs, and how to control them, and analyzing billing and sales in relation to the revenue budget, and then preparing P and L statements.

To solve all this, I have instructed Vern to get rid of his book-keeper who is slow and inept. I have placed the buying and ordering of supplies under Bill Wheatley's secretary, (after all, does it take a CPA to order toilet tissue?) As soon as I have laid out the budget, we will go over it, and slash costs some more. Then Vern will make it up in final form and submit it to you. In the meantime, I am working with him to simplify the procedures in his office, and to get him set up in the new system. Right now he is in the process of cleaning up the old payroll problems which we inherited from Mr. King, including severance pay for the employees Bill and I have discharged.

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Now, Don, I think Vern is a great guy who will work well into our new organization, and I would like to keep him, BUT you must inform him that you have complete confidence in him yourself, so that he can allay his fears and get to work. In the meantime, I will personally check all figures submitted to you for accuracy. I am in full agreement with you, that there is NO AREA for ERROR in the KRLA accounting department.

PROGRAMMING:

Don, I am so happy over Bill Wheatley, and what he is going to do. Having both come from a background of Mid-Western radio, we think alike on just about everything. He is a tremendous programming man, and a splendid person to boot. Bill has finally gotten his personnel situation taken care of, and they are all going to be tremendous air personalities. The only doubtful one is Dick Haynes, who is a well known local personality, but who I sincerely doubt can really cut the mustard the way we want it cut. Bill and I are going to audition Haynes on the new format the middle of this month to make a final decision. If he doesn't sound like he can really cut it, I insist that we get a new man, since this will be the all important seven to nine AM time period.

In the field of program promotion, Bill and I will send you a joint report on what has been finalized in this area by the end of next week. I feel sure that we will be able to do a maximum of audience promotion with a relatively small budget. (I also feel we can trim some of the present budget in this area.)

In the field of news, Bill has decided to stick with two men and one part time man for the present. This will save some more money on the present budget; I feel that we should have a mobile news cruiser, and one will be sufficient, but it is an absolute must to have at least one mobile unit for "End of the World" type stories and features.

Personnel-wise in programming all of the old guard have received their notice or have resigned, and we should be getting rid of the

last of them within three weeks. But I want to prepare you for the outflow of cash that will be expended on union severance pay, and vacations, and talent fees. The talent fee situation on this station has been a monster. One announcer has been making in excess of two thousand a month from fees alone. Since many of these fees were expended during the old regime on strip shows, and since we have had to give two weeks notice to the sponsors of these shows, and at the same time convert the accounts to spots, it has taken a little time to get rid of these announcers. Needless to say, there will be NO TALENT FEES at KRLA!

Administration-wise, I have made a number of changes, and will continue to do so as I run into problem areas. A typical example, in postage, for years one girl has been running out to the post office every other day or so to buy stamps. They were then kept in an open box, for anyone to stamp and lick as

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they chose. There was absolutely no control over who used postage and for what purpose. I have installed DM Pitney-Bowes Postage Meters in both Pasadena and Los Angeles, and you can be assured that no personal use of postage will be made under this system.

Also, we are paying huge amounts of money on the phone system in Pasadena, with about twelve trunks on two different exchanges. And still Bill Wheatley downstairs can't call upstairs to Vern Dobson. He has to run up the stairs!! So we are doing away with the switchboard, installing a simple, desk-size, automatic PBX, at about half the monthly rental of the board, cutting down the number of trunk lines, and doing away with the switchboard operator. This new system will also include an internal dialing system for Pasadena, so people will not have to run back and forth to the various departments. Since it looks like we may have to remain in Pasadena for some time, I thought it necessary to have decent phone service, and at a lower cost. Also we have finally done away with the many remote lines which ran as high as \$1,800.00 per month. We lost some business because of this, particularly at all

the many hillbilly night clubs we had on the air. Not really a great loss, and only a temporary one.b

ENGINEERING:

Jack Reeder is hard at work on the nighttime proof of performance. Like all engineers he is very pessimistic about having it completed by September 1st. But he is a great engineer and I'm sure he will make the deadline. We seem to be in good shape on the 50KW daytime pattern. We have had to file for an extension on our CP, and I signed the application for a ninety day extension. It is imperative that Jack finish his work as soon as possible. He is using a number of extra men on this job, including a \$120 per day consultant, and the cost makes me a little ill every time I think about it.

I have told Jack that as soon as he has the nighttime pattern firmed up, and we are in normal operation on the 50KW to start a project on meter readings so that we can file for remote, unattended operation within one year. This will mean a \$46,000 yearly savings in engineering salaries alone. What are your thoughts on this matter?

Frank Goodson, the supervision engineer at the studios is busy installing the new turntables and wiring in the consoles and related equipment, so that the studio facilities will be all set within another ten days. We have made good progress on this front, and Bill Wheatley is keeping tabs on the installation.

CORPORATION:

One small problem that has come up with the bank, and my position as General Manager of the station, has been the question of whether or not I am an officer of Eleven-Ten Broadcasting Corporation. As General Manager of KXLA, I am actually an employee of Eleven-Ten and not an officer, and this involves

some problems in the matter of signing checks, FCC forms, and local tax papers on behalf of Eleven-Ten Corporation. This is a mere legal

formality, and you might check with your attorney on it. The same also holds true for Broadcast Equipment Corporation, since I will also be signing checks for that company.

AND NOW. . .THE MOST IMPORTANT OF ALL. . .KRLA SALES DEPARTMENT

Personnel-wise, I have discharged Mal Ewing, Frank Simmons, Walter Burns. We have paid them commissions thru the end of July. I held onto them for two weeks in a vain effort to salvage some of the country and western business that was on the station. Bill Wheatley through sheer necessity had cancelled some 12 thousand a month in billing on remotes, and special shows. We had to give as much as 28 days notice on some of these accounts, many of which had been on the station for ten years.

We tried hard with each account to convert them into spot advertisers, and succeeded in many cases. But so much of the station's billing was tied up with night club and church remotes, it was not possible to salvage all the billing. I figured we'd be doing well to keep 30 per cent of it, and we wound up with better than 40 per cent of this business. (Armand Lamont lost \$12,000 in one single day.) So it has been a hectic race against time to reorganize sales, and at the same time maintain some billing on the station to keep us in bacon.

In addition to Armand Lamont, I have hired Guy Reily, a good Catholic with four children. Guy is as stable as the rock of Gibraltar and will do a great job for us. He comes to us from KHJ-TV where he had a great sales record. I have interviewed about 49 prospective salesmen, and the Hollywood phonies have been walking through here by the droves. I feel it is essential to get the highest caliber men possible, and also men who are eager to make more money. You remember what I said about no \$1,000 per month guarantees. Well, I take it all back. Most of the real good salesmen in this market, even on the small stations are making from \$12,000 to \$16,000 a year. The real pros at KMPC and KFWB are making anywhere from \$20,000 to \$30,000 a year. So we are simply going to have to offer enough in the way of an initial

guarantee against commission to support good men at a reasonable economic level.

So I have been playing this by ear. I have made a deal with Armand Lamont, guaranteeing him \$1,400 per month against a 9 per cent commission. He squawked when I dropped him from 10 per cent, but he is smart enough to realize that in the long run he'll make far more money with us than with the old operation. As it was, he was making over \$20,000 a year with KXLA.

Our idea of 9 per cent was a good one, and is more than fair. I have found that there are as many different sales compensation plans as stations, with most stations giving a straight salary plus a smaller commission. I believe that our plan will work out splendidly. I am going to write two year contracts,

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cancellable upon 60 days notice at our option, with all our salesmen. They will be guaranteed a wage based on their needs for the first six months, until they are over their guarantee on commission. In other words, this is a guarantee against commissions, not a guarantee plus commissions. So far, Armand Lamont will be guaranteed \$1,400 per month, and Guy Reily \$1,050 per month, against nine per cent.

I will hire the two final salesmen within the coming three days, and by next Monday we will have a full sales crew out on the street. But believe me, it is worth the extra effort to get absolutely the best men we can. The boys on the street from KLAC, KFWB, KHJ, KNX, KMPC, and the others are all real pros. They have only one basic weakness, they are all too "FAT" and too "LAZY". I know of cases where agencies that are responsible for big time billings have not been called upon by salesmen from KFWB and KMPC and KLAC for over six months. They have to phone in their orders. How green do you want your pastures?

RATES: I'm glad that you approved my package plans. Let's get to work and sell the package route. I don't like firm time spots. The packages are a natural way of increasing volume, giving an immediate discount to saturation users plus a semblance of a discount to long term users. Remember, we will set up a NEW CONTRACT YEAR on all new orders. And each account can earn the package frequency of from 1 thru 52 weeks within their contract year. In other words, if X account uses a package for 18 spots per week for, 13 weeks starting in September, and then five months later uses another package of say 24 spots a week for another 13 weeks he is entitled to the 26 week frequency on both packages. This is the real frosting on the cake that will in the long run enable us to hold onto a lot of long term local business here in L. A.

I will send your offices copies of the new package plans immediately. In the meantime, please inform all your offices to work thru me and me alone here in L.A. All requests should come thru this office. Our new sales secretary is Mary Stephenson, formerly with Capitol Records Advertising Dept., and prior to that, in the KFWB traffic department, so she knows radio. She is quite a gal, and I know you will like her.

AVAILS: At present it is not necessary to request confirmation of avails. We have more available time than the old man of the mountain. Also on the packages, please quote times within 15 minute or 30 minute periods, such as

7:00 - 7:30
2:15 - 2:30

Your men can submit any avails they wish at the present time, cause we can sure clear it without any trouble.

I am working with the Eisaman-Johns Advertising Agency on our trade space campaign and on the layout and production of our sales promotion material. I will write and layout the latter, but they will handle the production details, since they can get a 15 per cent agency

printing commission on it, and take the details of buying the printing off my hands. As regards the trade paper advertising, I will send you under separate cover, a complete schedule of dates, insertions, and costs.

On new business that is pending in New York and Chicago, etc., please send me a report of a possible order, especially if a local contact is indicated, so I can get busy on the local level for distributor recommendations, etc. Also, I am sending you by separate cover one copy of a competitive monitor of accounts on five other LA stations, including national, regional, and local business. You will have to separate the wheat from the chaff here until I become more familiar with what accounts originate locally and regionally. I will send you next week a monitor covering KFWB, KNX, and KABC, and the other stations missed on this week's monitor. Temporarily, I have subscribed to this monitor service at a monthly cost of \$75.00 per month, until we get to know the pattern of business. Actually this is pretty cheap monitoring, since I discovered it would cost us \$20.00 a day to hire a crippled woman to make them for us exclusively.

COCKTAIL PARTY: The party is set for the Beverly Hills Hotel, on Monday, August 31st, from 5 to 7 pm. We will give a full scale presentation of the new KRLA, with lots of showmanship and introduce our personalities, etc. I will invite all the people you mentioned, and if you can think of any more, be sure and give me a list.

Lee O'Connel thinks that we would definitely plan a similar, but smaller affair up in San Francisco, sometime in the middle of September, what do you think? Lee has been most helpful, and is most anxious to get off on the right foot with the buyers in the Bay Area.

Estimated cost for the cocktail party, including drinks, and hot and cold goodies for approximately 300 people is around \$1,400. Which seems like an awful lot of booze, but I'm convinced, Don, that it is essential to wipe away any trace of the old KXLA in the buyers' minds. Hence, the prestige of the Beverly Hills Hotel has become awfully important. Bob Cobb of the Brown Derby has also been most helpful, and would love to handle this for us, but he will be closed for a complete

renovation on the Hollywood Derby at this time.

MERCHANDISING: Don, as an old expert in merchandising and promotion, I know in my heart that merchandising is a "crutch" to lean upon when you don't have good audience ratings. Look across the country at the top rated indies, with the really BIG Hoopers and Pulses, most of them laugh when you mention merchandising. The real point is, when you buy radio time, you are buying just that,

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the pure simple medium of audio communication designed to enlighten the public about your product and service. All the merchandising in the world will not help a bad product. And in essence, it is the medium of radio that moves and motivates people to buy a product. Make any list of large national advertisers who actually INSIST on merchandising, and you'll find in most cases, that either the agency handling the account is shaky and wants to prove what a great job they did for the client, or the product is shaky and needs that extra in-store support which it can't receive on its own merits.

Now, I know that in many instances it has been a strong merchandising policy that has kept body and soul together in a lot of radio stations. For example, here inside L.A., KLAC, once on top, and now a dog, rating-wise, has been able to give a great job in the food field with a strong merchandising program. But then take a look at the KFWB situation . . . for years one of the top merchandising stations in L.A. What did they do when they got to the top of the rating charts . . . they dropped all merchandising!

As you can gather from the foregoing, I am against merchandising gimmicks in principle, and to boot, they are a very expensive item. To merchandise properly and effectively would require the full time services of a merchandising-promotion man. Believe me, Don, in L.A., jumbo post cards would not suffice. The only way to do it is to make a tie-in with a chain of super markets for rotating dump displays and aisle talkers. And to handle this means first, trade out time for the super market chain, and secondly, a man to handle the details of setting up

the displays and coordinating them with the distributors and jobbers.

Now the competition that does merchandise (and it has helped them get quite a lot of product business) are KLAC, KDAY, KNX, KABC, and KFI. The stations with the top ratings such as KFWB and KMPC don't need to offer these services. I would say, if we are going to merchandise, the decision will have to be predicated on the national sales picture in New York and Chicago. Is merchandising necessary to get the business now? If it is . . . then we'll have to add some additional expenses to the budget. As far as Local L.A. product accounts, the maximum we will have to offer is an occasional small bulletin in the local grocery news digest to let the trade know that X account is using spot radio on KXLA.

If on the other hand, we can achieve real ratings within a few short months, I think that we should commit ourselves to do the absolute minimum in merchandising. Let me have your thoughts on this matter one way or another. If you decide to offer a merchandising plan, I will get right to work on lining up a chain of super markets.

Don, there is so much more to go over, that I could continue until the wee small hours. Jackie and I have finally settled in our new place after undergoing a bout of colitis from all the excitement this past weekend. But all's well now, and we're having fun figuring out how to decorate the new place.

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Hold the fort, and I'll get the accounting department straightened out very shortly; and we'll have the revised and final budget on the way to you.

Warmest regards.

ED

P.S. You've been most patient with me . . . I promise to get these reports to you more frequently and with less verbiage.

PERSONAL AND CONFIDENTIALFRIDAY, AUGUST 7th

FROM: Ed Schulz

SUBJ: Weekly Resume'

TO: Don Cooke, N.Y.

Dear Don:

It's time to look at the "Facts of Life" in the Los Angeles market. In the five days (Since this Monday) that my downtown office has been in operation, I have learned more by far than all the talk that transpired while I was up in Pasadena.

Now I realize your deep concern about Vern Dobson and the seeming inability to provide you with the proper reports. Don, this is a mechanical problem. Vern's office is simply not organized or set up to handle such information. None of the records they have used in the past accurately reflect any of the information we need to keep abreast of this business.

I have gone over this entire problem with Roger Murphy and Stan LaRue (spent Thursday morning with them) and we covered every single facet of the problem. Roger will start working in Pasadena with Vern tomorrow (Sat) and the three of us will go over the entire accounting set-up to systemtize it. Then Roger will work with Vern for a few days next week, to set up the actual mechanics for the KRLA accounting department. This will take according to Roger about four days. We simply have to lay this fundamental groundwork in order to assure an orderly and timely flow of informational reports.

In addition, Roger will get to work on the budget, and go over it with a fine tooth comb, to make sure that all items of expense are included. I will then chop as much off the budget as I possible can to further reduce costs.

Now, in the matter of whether or not we should retain Vern Dobson, I feel it would be a costly mistake to let Vern go at this time. He is perfectly capable of performing the necessary tasks. What he needs is a new approach and a new system, which Roger will give him, based on the best business and accounting practices in the radio industry.

Believe, me, Don, this is the only way to approach this problem. WE have to have a complete new system for even the most basic jobs, from counting the logs each morning to getting out the billing invoices at the end of the month.

In regard to Roger Murphy he is an extremely sharp boy, and I like him very much, but he is a real "pro" in the certified accounting field, and I rather doubt that we could hire him away from his present job.

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WEEKLY SALES REPORT: Priority number one, is to set up the proper systems to compile the information for the Weekly Sales Report so that you can be kept constantly informed of our progress.

Now in regard to the present business on the books for September, October and November, I'm well aware of your shock when you saw even the weekly figures. But Don, you simply must realize that the entire staff of KXLA has slowly disintegrated in morale and work for the past three months. You have been used to a country and western station that has been billing around \$50,000.00 per month. And it would appear on the surface that we should keep that base of the old business and then start to add to it on the basis of the change in format to a Top Forty station. Actually the reverse is true, we will lose a major portion of this business because of the type of business it was. It was bought for one reason. . . To reach the Country and Western Audience. KXLA thru the years has never been sold in competition to other stations in this market. On the contrary it has been sold "in addition" to the other stations as a small station supplementary buy specifically to reach the relatively narrow hill billy audience. The justification by the buyers for using KXLA whether we're talking about a small retail account. or a national account here in L.A. has been the specialized programming and hence, the small but loyal special audience. This basically is the same approach to buying a foreign language station, or a Spanish station out here. Hence, when we start to change format, pull off strip shows, and hour blocks, the clients have to cancel. Their agencies literally have

no choice. Actually, Armand and I have done a good job of saving many of these accounts, and keeping them on till we kick off the new sound.

You also must realize the condition of the sales department prior to my coming here. Armand Lamont has resigned, Mal Ewing hadn't hadn't made a call for two weeks, and the other salesmen, were busy all day long looking for new jobs and sandbagging their KXLA accounts to follow them to KFOX, which is changing to Country and Western to pick up our old business.

In effect, Don, KXLA has never had any reputation among agencies or clients as a basic buy. The only reason it was ever sold to the Los Angeles agencies was because of Armand Lamont and his contacts in the agencies. The rest of the billing was made up of hill billy night clubs, religious programs, PI deals, and special accounts who were personal friends of Loyal Kings.

On the following page I am going to give you a complete analysis of our prospective billing based on orders now in the shop for September, October and November, plus the actual picture of the number of accounts on the air as of July 31st, the number of these that have cancelled, and the accounts that Bill Wheatley was forced to cancel in July in order to clear program time.

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GROSS BILLINGS DURING PAST THREE MONTHS

MAY 1959	\$ 54,351.57
JUNE 1959	49,098.17
JULY 1959	42,858.55

As you can see, billing went into a decline in June. The simple fact is, since none of the personnel of the station knew what was going on, and since Loyal King apparently paid no attention to the sales problem, no active selling with any sense of direction was accomplished. Actually the only person who continued to do any selling at all was Armand Lamont. Naturally, the word was out about the sale of the station, and human

nature being what is is, no one would stick their neck out and do anything. And remember, until this past Monday, there has been absolutely no organized selling of KXLA during the past six weeks'.

KXLA FORCED CANCELLATIONS IN JULY

During the month of July, Bill, because of programming needs, and because most of these accounts were due 28 days notice of cancellation, was forced to cancel a total of

\$11,341.00 in monthly billings'

This amount of billing was composed of 26 separate accounts, of which 9 were hill billy night clubs using anywhere from a quarter hour to a full hour each night on a remote show. Eleven more of these accounts were churches using remotes, and the balance were local retail accounts, either using remotes or program strips across the board.

CLIENT CANCELLATIONS DUE TO FORMAT CHANGE

We have also within the past two weeks received cancellations from agencies on approximately 14 accounts with a total gross monthly billing of:

\$8,995.00'.

These are accounts that were basically tied up with one or more of the country and western personalities on KXLA such as the "Squeakin Deacon", and Cliffie Stone. In the Hill billy field these two personalities had a loyal following among certain clients and agencies. When they were discharged, they took their accounts with them to KFOX or other stations.

Actually, we, in addition to the above, received 22 other notices of cancellations due to program and format change from agencies, but as of this date, Armand and I have been able to keep them on the air, by selling the great new station we will have September 1st. As you can see Don, I've spent considerable time, simply trying to save the current billing.

This then amounts to a total billing loss per month during the

past three weeks of \$20,236.00 in monthly billing.

Now in the meantime, we have not been idle, we have saved some 22 accounts that gave us cancellations, and we now have on the books of three days ago (August 4th, the following billings booked for the months of September, October, and November:

September:	\$16,907.70
October:	16,933.29
November:	15,101.86

In addition, yesterday, I sold a \$58,000.00 order to begin on December 26th, concurrent with the opening of the Santa Anita Racing season.

We are working on the big agencies right now, trying to hold off cancellations from such accounts at White King, Schlitz, and Ford. The media director at J. Walter Thompson, has ordered Schlitz cancelled for example, effective the day we change to the new format on the simple reason, that they bought KXLA only for the western and country audience, not for the pop programming, and this is the only way they can justify the buy. Since all the Los Angeles agencies with the bigger product accounts buy by rating points and cost per thousand, KXLA was never under consideration along with the big stations like KFWB, KLAG, KNX, etc., where buys were made and justified by audience ratings, KXLA was bought as a "special audience buy" just like you'd buy a negro, spanish or FM station. When the only justification, the country and western programming, is dropped, the agencies feel that the schedules can no longer be justified to the client.

Now, Don, this is nothing more or less that I realistically expected in this market. We are in effect asking people to buy a pig in a poke, and the big agencies are just not going to "gamble" until they have heard what we have to offer. In just five days of trying to hire salesmen, put out cancellation fires, we have not had the time to properly tell this story.

The other basic problem was my decision not to offer rate

protection on the old \$6 and \$8 rates after we kicked off the new sound. In other words, we are selling now at the new rate card. This is the hard way to go about this, but I'm positive that it is the right way. Because we have to sell this station not as a changed station, but an entirely new property. And our sales problems must be approached on the same basis, as if we actually were putting a brand new station on the air. In this we will succeed, I am positive, and I am growing more positive each day. But we must expect to lose billing and accounts that were based on the old operation as we swing into the new format.

One other basic problem is the fact that we can not telegraph our punch by going into intimate details about our promotion plans, and programming plans. I know for example that KFWB has a big money give away promotion ready to kick off on Sept. 7th, the day they think we are going to change. They are doing this to blunt the effects of our kick off promotion.

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SALESMEN:

The problems of hiring capable salesmen, who are intimately familiar with the Los Angeles market and the agencies here are extremely difficult. But I'm convinced that we must hire only the finest men of high caliber that time and money will allow. Since 95 per cent of all radio billings locally bought comes thru agencies (455 agencies in the market!) our salesmen, must be intimately familiar with LA agencies and personally know the buyers. Believe me this is important! You can have the worst radio station in the world (Like KBIG) and still do a hell of a business if you have the right salesman.

Frankly salary scales are a little frightening out here. I have made very good contacts among the top salesmen out here and am now familiar with what the average scale of earnings is by stations. For example:

KFWB	4 men	high 38,500	low	24,000.00
KMPC	5 men	high 31,000	low	17,000.00
KLAC	4 men	high 17,500	low	12,000.00
KNX	5 men	high 22,500	low	16,000.00
KBIG	4 men	high 25,000	low	18,000.00

The high and the low represents the top billing man with the best list, and the low billing man at each station. Don, these are not pie-in-the-sky figures. They are common knowledge in the trade and have been verified by the people at the Southern Calif. Broadcasters.

Since we basically will have to have men from other stations, it means we will have to pirate our men. (Which is what I'm working on) AS you can see with our budget, very few, if any, top men at the other leading local stations would be willing to take a tremendous jump in earnings, even with the bright prospect of bigger future earnings. For example, Paul Stoddard, the second man on the team at KFWB, is tremendously excited over what we are going to do, and really has the KXLA fever. However, he made \$31,000.00 this past year. Naturally, he wants a salesmanagers type job.

I have turned down some very fine potential salesmen, who I really think would make fine salesmen in the long run. But they either lack media experience, or they do not know the Los Angeles market, and we simply can't afford to carry them for the six months or more it would take them to cut it.

Now, Don, I know you're not interested in details, what you want and need are results. Well, sir, you are going to get them. But I wanted to fill you in on the situation as I have experienced here so far.

One of the most important factors is the cocktail party and presentation, which I know will make a big impression. We will be writing an awful lot of business once all the agencies and clients have been exposed to our sound, our promotions, and our results.

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In the meantime, with the Arthur Young people devoting their time to re-organizing Vern, I am now devoting full time to sales, and sales recruitment. I have a full round of agency appointments lined up for next week. Armand is doing a fine job, and we are going to be writing business.

As far as August is concerned, I feel that any further efforts to protect August billing will only hurt us in September and October.

Don, keep the faith. I will keep you completely informed on every facet of the operation. I have instructed Bill Wheatley, Vern Dobson, and Jack Reeder to each send you a weekly memo covering their operations to keep you completely informed and up to date on what is happening. All of us are working toward D-Day and the success of our kick off promotion.

I am looking forward to your visit here the end of this month. Please let me know your exact schedule, so I can arrange to meet you when you arrive at the airport.

Warmest regards,

Ed Schulz

P.S. Please pardon the typing and spelling. I banged this out myself.

Applicant's Exhibit 18

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TO: Don Cooke N.Y.

5 October 59

Dear Don:

The following is a complete report on the status of KRLA Radio as of this week.

RATINGS: The happiest news ever. KRLA in the September breakout of the August-September HOOPER is FIFTH between 12 Noon and 6 PM, Monday thru Friday. In addition, KRLA is SIXTH in over-all ratings. To galvanize action among the local agencies, we have sent

night letters (Copy attached) to every time buyer and account executive in Los Angeles bringing our fabulous rating story to their immediate attention. In addition, today we started "Operation Ratings" with all salesmen, and myself, calling upon every agency in town with the full rating story. I am air mailing you 250 reprints of the September breakout. More are available if necessary. When you consider the fact that we achieved this rating during the first thirty days of operation, at a time when we stopped most of the major money give aways on the air, and against tremendous local interest in KMPC's ball games, it makes the situation even more indicative of KRLA's popularity. In addition, remember we did not have Perry Allen or Roy Elwell on for the full rating period. I made a check of previous Los Angeles HOOPERS at Eisaman-Johns and it looks like this is the BIGGEST rating increase ever made by a Los Angeles station in a 30 day period of time. (See enclosed photostat)

PERSONNEL: Here is a complete run down on our personnel situation.

1. Mickey Schorr: Has received our contract, and is not completely happy with it, especially the exclusivity provision. I told him that our policy was to waive this clause for record hops, commercial talent jobs, etc., when it did not interfere with his duties on KRLA. He now understands this, and we will work out a new contract. The form I used was one Jack was given by one of the dee jays, and is a little too tight. I have a copy of a Storz contract, and will re-issue all new contracts to all our dee jays as most of them have refused to sign their contracts because of this clause. Schorr expects to be here not later than October 15th. I feel that we should program him in the 6PM - 9PM slot against B Mitchell Reed on KFWB. This is our weakest time period, with extremely strong competition from KFWB. I believe that we should put the strongest possible personality in this time slot. Please let me have your thinking on this.

2. Bill McMillan: Have finally gotten hold of Bill McMillan, News Director of WHB in Kansas City. He has sent me a tape, and he is

good! in fact he is terrific. As you know he was an award winning news director in Oklahoma City prior to going to WHB in Kansas City. He is a native of Los Angeles and really wants to get back here. He is making \$165.00 a week at WHB, plus talent. So it won't take very much more to

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bring him out here to KRLA as News Director. He has the background, and the know-how to put some badly needed depth into our news operation. Ed Perry is doing a fairly good job as a newscaster, BUT he is not a News Director in any sense of the word. So if you approve of this move, I will hire McMillian, as News Director on a one year's contract for \$10,000.00 per year, and get rid of the third newscaster, Dick Beebe who has been just a temporary fill-in for us the past three weeks.

3. Clyde Annabel: Our accountant who has done a fairly good job of re-organizing our accounting set up under the procedures laid down by myself and the Arthur Young experts has RESIGNED, to accept a comptroller ship with a larger firm. This was not a question of money, but of greater opportunity in the accounting field. Clyde is the type who likes titles and the authority to head up a large department. He honestly feels, and I believe he is right that we really do not need a full-charge accountant in that job. Merely a good full-charge bookkeeper, at a salary scale of \$600 to \$650 per month. I am pursuing this and Arthur Young Inc. are also screening their personnel files to help us locate a new man. I hope to have the new man hired by the first of next week at the very latest.

4. SALES MANAGER: As I told you on the phone, I am convinced that we need a top man with a strong sales background in this market as sales manager. I have had four prospects in mind on this. Felix Adams, formerly of KLAC, Don Harrington of KBIG, Cliff Levine of KDAY, Al Racco of KNX, and Paul Stoddard of KFWB, the first three are nothing more than fairly good sales men, with little or no attributes to recommend them as sales managers. Al Racco of KNX is an

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exceptionally fine salesman, but will not make a move at this time. Paul Stoddard, as I told you, is far and away the best salesman of the group, and I believe possesses all the virtues of a true working sales manager. His sales record at KFWB is tremendous, not only during the last two years, but prior to their rocket rise in ratings. His former boss, the general manager of ABC Radio and TV here on the west coast recommends him highly. I am impressed by his aggressive approach to sales, his firm belief in not stopping at the time buyer level but pursuing a prospect right thru to the client, and his ideas for new sales development. My problem frankly is his salary demands. He wants this job, but feels that he must have a draw or guarantee, against sales of \$25,000.00 per year. This would be based on an over ride of the local sales staff's production. I firmly believe that this is the way a sales manager should be paid, not only on his production but on the production of the entire local sales staff, and I have mentally figured out that a sales manager's salary should be based on 2 per cent of the local net billing after agency commission. On this basis, Stoddard feels that he can put \$1,600,000.00 local billing on the station in 1960. My own feeling on this is, I wouldn't care what we had to pay a sales manager, as long as he was producing the business, and as long as his compensation was reflected in the amount of local business put on the station. (Please understand that when I say local business, I am talking about only that business coming out of metropolitan Los Angeles.) Stoddard showed me his last commission check at KFWB, and it grossed out at \$3200.00 for the month of September. Stoddard is married, has five children, is a pillar of the church, and leads a thoroughly moral life, both privately and in the business world. He is a salesman, not a con artist, or a popular glad-hander. He wants a two year contract, with the understanding that if he fails to produce the \$1,600,000.00 he will simply bow out. The guy has guts, and I really believe that he is excited by the challenge of the job. However, his insistence on the minimum \$25,000.00 drawing account is the big question. He is ready to come to work tomorrow. What is your feeling on this matter?

As I mentioned in the paragraph on Schorr, the dee jays have squacked about signing the contracts given them. This is not a matter of money but of the conditions. The only people we have contracts from are Jimmy O'Neil and Roy Elwell. I am re-doing the talent contract to spell out the provisions on exclusivity, so that the men will be legally entitled to do record hops, etc., with the understanding that we reserve the right to disapprove of any outside activities when they do not serve the best interests of KRLA. I will send a draft of the new contract to you under separate cover for your concurrence.

Also under the heading of Personnel comes the subjects of our union contracts with AFTRA and IBEW.

IBEW: This contract is up for renegotiation, next week. The entire industry here in Los Angeles has made a general settlement and all but a few stations have signed. Our specific problem revolves around the fact that our dee jays are spinning their own records and riding their own gain. The union has not granted a waiver to any other 50KW station for this. Indeed, even KFWB engineers spin the records. Since it is vital to our physical operation, I have told the IBEW that we want a special waiver covering the dee jays spinning their own records, plus a waiver on news remotes, and beeper phone recordings. Unfortunately, the day that the union business agent decided to visit the Pasadena studios, he found one of the dee jays using an ampex tape recorder (which is in violation of the contract) and they have been a little stuffy about this. I have assured the union that this was a case of over enthusiasm on the part of the individual dee jay concerned, and have issued strict orders for the dee jays to keep their hands off the equipment, except their own turntables. The union is also worried about the possibility of going remote at the transmitter. I feel that we can effectively re negotiate the contract, along the lines of the industry settlement, and get our waivers to cover our type of operations. Will report on this when concluded next week.

AFTRA: Because of our denouement vis-a-vis Ken Barnes, and

Hal Goodwin, and the official complaints registered by both these clowns, AFTRA has requested a special meeting to cover working conditions at KRLA. I have tried in vain to get together with Claude McCue, the AFTRA boss, but he was been out of town for the past two weeks. I have an appointment with him as soon as he returns, and will go over the entire situation with him. He is a reasonable man, and has privately told me, his is agast at what Wheatley did to us personnel-wise in Pasadena. I don't expect any trouble here at all. However, our basic minimum rates for announcers and engineers will go up to \$165.00 per week, when we offically are designated 50KW by the FCC. Since all of our boys with the exception of two of the newsmen, make well over scale this will not add much to our payroll load.

PURCELL: The last time I talked to you I stated my position, and the feelings of Jack Cooke in regard to the Purcell situation. Since they are obviously guilty of the very thing they have accused us of, it seemed to me at the time, that we had an entirely new situation, and that we should not settle a dime on Purcell. However, both Tommy Dowd, and Jim Green at O'Malveny & Meyers feel that two wrongs (whether we

were right or wrong) still do not make a right. And if our ostensible reason for paying Purcell the ten grand, ie., to show good faith to the public and the trade, was valid before the Minneapolis incident, the reason is still valid. Further if our private reason for paying the ten grand was to forestall a complaint to the FCC, we still would have no guarantee that Purcell wouldn't complain to the FCC, regardless of the Minneapolis situation. Certainly, if we went through with our present agreement with Purcell's lawyers, and paid the ten grand, he would have absolutely no grounds for any complaint to the FCC, legally or morally. The latest development is this. Purcell's lawyer has told Al Kreps that they still expect payment of the ten grand, and they expect payment damn

soon. They feel that our tentative agreement for a settlement with the attendant publicity releases, etc., is no less valid because of what happened in Minneapolis, and that if we do not follow through they will institute a civil suit for the ten thousand dollars. It is up to you Don. to decide how you want to handle this. Al Kreps feels that we have a fifty-fifty chance of winning a court fight. Such a fight will cost about two thousand in attorney's fees. There is one thing to note, we could delay such a trial for almost a year at a minimum legal cost of about five hundred dollars. By that time, the publicity value of the thing would be lost for both sides, and they might be willing to settle out of court for less than the ten grand. The only negative aspect of going to a suit, and delaying the suit, is the reaction to this within the trade. Let me have your thoughts on this. I hate like hell to pay out ten grand to the son of a bitch, as you know, but up to now, we have had a field day publicity wise, and have come out on top. We may suffer a negative reaction publicly and in the trade by not paying. And we may run the risk of a complaint to the FCC. I know you will weigh this one very carefully and I will relay to Al Kreps your wishes in the matter. I do feel that we have stalled the thing as long as we can. It's either go through with or original settlement and pay the ten grand, or tell the bastards to go to hell and sue us.

BARNES & GOODWIN: As you know, both clowns refused to settle, both have complained to AFTRA, and both have returned the same attorney and are pressing for a settlement of their contracts or threaten to go to court. Time is a big help here. Barnes is still officially an employee of ours, now on extended sick leave. However, he is due back next week, and I have assigned him to the midnight to dawn news shift. Since we don't want to be in the position of not letting him work. He will get tired of this damn soon, for he is a lazy man, and a cry baby. But keeping him on the payroll mitigates any complaints he has made to AFTRA and weakens his case against us on the contract. Goodwin. was officially discharged for incompetence and breach of contract.

Hal Goodwin, and the official complaints registered by both these clowns, AFTRA has requested a special meeting to cover working conditions at KRLA. I have tried in vain to get together with Claude McCue, the AFTRA boss, but he was been out of town for the past two weeks. I have an appointment with him as soon as he returns, and will go over the entire situation with him. He is a reasonable man, and has privately told me, his is agast at what Wheatley did to us personnel-wise in Pasadena. I don't expect any trouble here at all. However, our basic minimum rates for announcers and engineers will go up to \$165.00 per week, when we offically are designated 50KW by the FCC. Since all of our boys with the exception of two of the newsmen, make well over scale this will not add much to our payroll load.

PURCELL: The last time I talked to you I stated my position, and the feelings of Jack Cooke in regard to the Purcell situation. Since they are obviously guilty of the very thing they have accused us of, it seemed to me at the time, that we had an entirely new situation, and that we should not settle a dime on Purcell. However, both Tommy Dowd, and Jim Green at O'Malveny & Meyers feel that two wrongs (whether we

were right or wrong) still do not make a right. And if our ostensible reason for paying Purcell the ten grand, ie., to show good faith to the public and the trade, was valid before the Minneapolis incident, the reason is still valid. Further if our private reason for paying the ten grand was to forestall a complaint to the FCC, we still would have no guarantee that Purcell wouldn't complain to the FCC, regardless of the Minneapolis situation. Certainly, if we went through with our present agreement with Purcell's lawyers, and paid the ten grand, he would have absolutely no grounds for any complaint to the FCC, legally or morally. The latest development is this. Purcell's lawyer has told Al Kreps that they still expect payment of the ten grand, and they expect payment damn

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Both Al Kreps and myself feel we have legal and moral right on our side in both cases and we will not settle a dime on either man. I am not worried about either case, and I think both issues are a matter of time.

[515]

PROGRAMMING: Our sound is good, but needs constant improvement. In regard to your memo of this week to Herb Heiman re the agricultural segments, I have had Herb organize the news department to handle a 40 second market round up in the 5:55 AM and 11:55 AM newscasts. In addition to this we will start next week in running two two-minute featurettes a day coverering the "Best Buys" in produce. These two daily featurettes will be directed to the housewives in the Roy Elwell Show, and the Bob Cole Show, and will be done in co-operation with the USDA produce reporter at the Los Angeles fruit and produce market center. These four elements in our daily programming will meet our obligations to the FCC under the outlined program schedule which I sent to Tommy Dowd as an amended exhibit to our renewal application. You can be assured that we will not run afoul of the FCC in this regard.

PUBLIC SERVICE: I have also set up a new approach to Public Service announcements. We will choose two or three public service projects every two weeks, and do a regular saturation spot campaign for the activities tieing in to the local organization. These local people will be informed by letter of the exact schedule, so that they are aware of what KRLA is doing for them. In this way we will be able to concentrate of specific public service causes, and do a resultful job for them, instead of scattering a few public service spots for many different causes like most stations do. Also in regard to your question about the quarter hour public service segments, we have redesigned our log so that it shows every 15 minute segment in the 24 hour broadcast period. Don, one single minute spot for public service run in a sustaining quarter hour, can and will be claimed as a fifteen minute period of public service. WE DO NOT have to fill the entire 15 minutes with

gab, we simply run our regular KRLA format, and include a one minute participation for a public service subject within the 15 minute period.

RELIGION: At last count I have turned down over \$115,000.00 in commercial religion. As you know California has a million different forms of religion, and they are all anxious to get on California's newest 50KW station. But true to our word to the FCC we are not and will not accept any commercial religion. I feel that we can best discharge our obligation to run religion by running a series of short "Religious Featurettes" using a rotating group of ministers, priests, Rabbis, etc. Herb is working now on setting this up. And it will be produced in such a way that it will not interfere with our sound hour format.

TAPES: I know this has been a sore subject with you. But the taped presentations of the Dee Jays has been done. We are making six dubs of each, and will ship them off to you within two days. Also one set each will be sent to each of the rep offices.

STATION PROMOTION: Don, I think that is imperative that we run a strong audience promotion to attract listenership from outside our present audience. Up till now, we have directed all our promotion to our own audience and have relied on word of mouth to get new listeners. We have gotten some reaction from agencies here about our lack of outside promotion, and while I don't give a damn about what the agencies think on how to run this railroad, I do believe that it behooves us to come up with a good solid audience promotion contest, using a different media, to attract listenership from the general public who have not yet been exposed to the new KRLA.

AUDIENCE PROMOTION: By now you have received the presentation from Eisaman-Johns regarding the ideas that Jack and I developed at a meeting with them. This promotion would use newspaper space to promote a \$25,000.00 contest based on identifying the pictures of our dee jays, giving the correct times of their shows, and correctly placing

the secret word underneath the dee jays pictures. This contest forces people to listen to KRLA to get the secret word, and promotes our dee jays at the same time. The cost of the promotion is roughly \$10,000.00 for the newspaper space and production. The prizes would be promoted by KRLA on straight contract deals. The most important aspect of this promotion is the fact that we will be reaching a vast number of people who are not now KRLA listeners. Don, I feel that we should seriously consider this promotion for the month of November, to run concurrently with the PULSE and HOOPEF RATING WEEKS IN THAT MONTH.

SALES PROMOTION: Eisaman-Johns was a little upset about your note in regard to the personality fact sheets. The reason they have not been finished as yet, is because I held the project up. I know, Don, how important these personality fact sheets are, but up until ten days ago our program schedule and the dee jay shifts was still not firmed up. I wanted to have the full line-up firmed up, and then gang print the bios in order to save money. This project is now under way, and the fact sheets will be finished in five days. The only one we won't have is Mickey Schorr's. Also when you receive the fact sheets, your offices will receive a KRLA presentation folder to hold the following:

1. Personality facts sheets.
2. Rate card
3. Coverage maps
4. Audience ratings
5. Ad tear sheets

Also you will have a complete set of dee jay tapes running approximately 15 minutes with telescoped music.

ENGINEERING: I have some great news here. As you know, Jack Reeder was unable to get Rich from George Adair to come out here to help on the proof of performance. Since that time he has been hard at it, running the proof on his own. And its looking better all the time. The radials are being checked out, and the readings on the check points

look good on most radials. A change in the grounding system of two of the California Edison high tension line towers helped the entire proof by about 20 per cent. We are stepping down to 10KW during the day after 11 AM to run proofs on the nighttime pattern during the day, and this is speeding up the work. Jack Reeder reports that the final proof is now within sight.

NEW LOCATION: Since we were unable to conclude the deal for the fine location at Selma and Vine, I have told our relator Boisvert to take his time, and come up with a list of available space suitable for our needs. Unless we can come up with an ideal location, I don't want to make a long term deal in relatively inadequate quarters. I will file a full report with you as soon as I get the list of locations and check them out with Boisvert.

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FINANCES: I am going over our entire financial situation with Clyde Anable, and will air mail you a complete report over this week end, showing our cash position, projected receipts for the next 30 days, and payroll and payables requirements for the coming 30 days. As you know, September billing was way off our expectations because of a flurry of cancellations. We lost 8 automobile dealers during the month because of the steel strike and lack of new cars. Chevrolet and Chrysler have already shut down production here in Southern California and Ford is expected to follow suit next week. On the new cars showings, most dealers only received about 1 out of every seven cars ordered. And this situation will remain so until the steel strike is settled. In addition, the drain on our resources because of termination payments, has been extremely heavy.

SALES: I will also this week end send you a complete report on local and regional sales activity and reports of bookings for October, November and December, as well as my estimates of what we will bill these months. With this fine Hooper, I am very confident of our ability

to double and then triple the business on the station in a relatively short period of time. You'll have the complete picture on this report which I will get off this weekend.

Don, that about wraps it up for this memo. From now on, they will be shorter and more frequent. But I wanted to fill you in on all the details of the operation as completely as possible. Hope that all is well with you and your family.

Warmest regards,
Ed Schulz

Applicant's Exhibit 18

[518]

DONALD COOKE, INC.

Inter-Office Correspondence

To: Ed Schulz
Los Angeles, California

From: Don Cooke
New York

October 15, 1959

Dear Ed:

I have arranged to borrow, on behalf of the Eleven Ten Broadcasting Corporation, another \$50,000.00. This \$50,000.00 is being deposited in KRLA's account in Pasadena.

This should be the very last of any borrowing necessary. I never believed I would have had to borrow anything, so it is up to you and the sales staff to see to it that we start making some money on this station.

Best regards,

/s/ Don

* * *

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Applicant's
Exhibit 18

No Oral Instructions

OFFICE MEMO

October 15, 1959

TO: Ed Schulz

FROM: Don Cooke

SUBJECT:

You have no idea how happy I am about the Hooper ratings. I think it is important that we are not only fifth between 12:00 NOON and 6:00 PM, but we are even with K F I in this period and within hailing distance of KNX - no minor accomplishment. Please note also that Sunday through Saturday, 6:00 PM - 11:00 PM, we are tied with KHJ and well above KNX. Heaven itself, in the month of September, will not be able to match this. On the other hand, I fully expect, as you know, that the October Hoopers will show us in third position in the market. That's right: third position. I don't see how we can be stopped. Naturally, I attribute our comparatively weak showing in the morning (7:00 AM - 12:00 NOON) to the lack of Perry Allen and Roy Elwell when the September Hoopers were taken. Just wait for what these two outstanding DJ's will do to our morning ratings! Wow!

Once Mickey Schorr arrives at KRLA, I feel the ratings will go up even more. Overall, that is. I think the better DJ's we have, the more listeners will accrue to the station in all time periods.

I am very excited by the entire trend. Six weeks ago we were nowhere. No audience, no nothing. What little audience KXLA had, undoubtedly migrated to other western, country, and just plain "hash" stations. And look at KRLA today. A real factor in the Los Angeles market. Consider too, the preposterously low rate we are selling at and KRLA becomes the most obviously good buy, not only in Los Angeles, but possibly in the entire country.

Enthusiastic? More than you will ever know. I doubt that our smashing

Memo to Ed. Schulz (Cont'd)

October 15, 1959

success has been duplicated in any important market, anywhere.

Mickey Schoor

I have already recommended that Mickey Schoor be installed in the 6:00 PM - 9:00 PM slot. I don't think there is a question of this. Please do so.

Announcers' Contracts

I am surprised that Roy Elwell and Jimmy O'Neil, two of our better men, saw fit to sign the present contract even though its terms are rigid. However, if you prefer to lessen the restrictions of the contract somewhat, by all means do so and sign the whole staff on the new form of contract. My only qualm: it is a bit of a slap in the face to Elwell and O'Neil. They may now seem a couple of dummies for having signed the more stringent contract. However, your recommendation is good enough for me.

[521]

Bill McMillan

Jack had already told me that he asked you to get in touch with Bill McMillan who has a national reputation as a news editor. I am delighted that he is prepared to come to KRLA. You should hire him at once as KRLA's News Director at a cost not to exceed \$10,000.00 per year. The contract should call for a further two years - following the formula executed with our announcers' contracts. Naturally, you will release Dick Beebe.

Perry Allen

Please don't forget that the Perry Allen contracts provides for renewal of four years, making a total contract of five.

Memo to Ed Schulz (Cont'd)

October 15, 1959

Clyde Annabel and Weekly Sales Reports

I am sorry to hear that Clyde is leaving. I think he is a "jumper". He won't be with this new firm too long before he will be up and running in some other direction.

I have never felt that we needed an accountant at KRLA. Annabel, as you know, is not an accountant but just a good bookkeeper. I agree completely with our suggestion that we hire a good "full-charge bookkeeper at a salary scale of \$600.00 - \$650.00 a month". Let me know the name of the man you hire and whatever you do, please emphasize to him the very real need of mailing to me, air mail special delivery, each Friday, at the latest, the Weekly Sales Report. Clyde Annabel has been terribly deficient in this regard, not nearly so bad as Vern Dobson was, but nevertheless, inexcusably bad. I must have KRLA's Weekly Sales Report on my desk each Monday morning.

While on the subject of the Weekly Sales Report, I cannot believe that the latest report (September 24th) is accurate. When last I heard of the billings for the month of September they were in the neighborhood of \$39,000.00. According to your September 24th Sales Report, the total month billing for September is now down to \$21,000.00. The number of cancellations must have been phenomenal to reduce so drastically our monthly billings. If the KRLA Sales Report as of September 24th is accurate, the station must have lost, in cancellations, over 40% of its September billings. Frankly, Ed, this is incredible. I never heard of such a thing. Perhaps you will drop me a line by return to tell me that Clyde Annabel's Sales Report of September 24th is to be ignored; that it wildly understates the actual figures. I certainly hope this is the case.

Sales Manager

I am convinced we must have a Sales Manager at KRLA. No stone should be left unturned in your efforts to acquire the very best man available. I know Felix Adams and I am not impressed. Apparently,

Memo to Ed Schulz (Cont'd)

October 15, 1959

you are not too impressed with Harrington or Levine. Al Racco is not available so he is out of the running. That leaves Paul Stoddard of KFWB. You are obviously taken with this fellow. You say his sales record at KFWB

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is "tremendous". His references are good. In his corner is the General Manager of ABC Radio and TV. Jack told me also that Al Racco spoke highly of Stoddard. So much for that. Stoddard seems to be the logical contender for the Sales Manager job but, I am confused by your remarks regarding his remuneration. Part way through the paragraph in which you deal with the subject of the Sales Manager, you refer to "draw or guarantee against sales of \$25,000.00 per year". Later on in the paragraph you refer to "a minimum \$25,000.00 drawing account". Which is it Ed? A drawing account or a guarantee? In my book a drawing account is just what it says: money drawn by the employee against commissions to be earned by him. If he fails to earn the commissions against which he has drawn, he is indebted to the company to the extent to which he has failed.

A guarantee, on the other hand, is just what it implies: a guaranteed amount of money regardless of the business he sells.

Frankly, I would prefer to see Stoddard move in with us on a drawing account. Such an arrangement provides the strongest incentive for him to produce maximum billings. I am sure you agree. Then, the next question I have is your statement that his draw or guarantee of \$25,000.00 per year would be "based on an override of the local sales staff's production". Then you go on to say "not only on his production" (I presume you mean on the sales which he personally produces) "but on the production of the entire local sales staff".

Do you mean that even on the billing which he personally sells he would

Memo to Ed Schulz (Cont'd)

October 15, 1959

receive a straight override; that his personal billings would be considered to be house business on which he is not paid the usual 9% but on which he would receive only the 2% override? If such is the case, and I presume this is what you mean, Stoddard would be inclined not to sell any business himself. Or, if he did sell business, to immediately turn it over to one of the salesmen so that the salesman could earn 9% and Stoddard would still collect his 2% override.

I am not clear on the suggested plan and, therefore, cannot approve it until I am clear.

So far as paying him a drawing account of \$25,000.00 a year and assuming that his commission formula is satisfactory, I am completely and fully in favour. I can quote you scores of instances where Sales Managers make a helluva lot more money than Managers, General Managers and - even Presidents. I see nothing wrong in this apparent topsy-turvey arrangement. A great Sales Manager is hard to come by and deserves every nickle he earns, even though it be in excess of other executives.

Please reply to me air mail, special delivery clarifying the terms under which you propose to hire Stoddard. It is important that I receive this by return so that we can make the move, if it is satisfactory to me at the earliest moment.

IBEW

Thanks for filling me in on this subject. I am sure that you will negotiate a satisfactory contract with this union.

[523]

AFTRA

I count on your persuasiveness and charm when you meet with Claude McCue to resolve this entire situation. I understand that the minimum rate will rise to \$165.00 per week when we are officially designated

Memo to Ed Schulz (Cont'd)

October 15, 1959

50 law by the FCC. By that time Beebe will be off your staff so that means only one man will receive an increase to the AFTRA minimum of \$165.00 a week: Hal Staal.

Purcell

I would like to think this over for another day before giving you my final decision. However, at this point, much against my built-in belligerency, I am inclined to go along with the advice of Dowd and Greene. I think that you and Jack would prefer to defy Purcell but I think that expensive caution, at this point, may well be the wise course.

As I write these words, I convince myself that it is not necessary for me to think this over for another 24 hours. I think you should get together with Greene and Kreps and bring the matter to its illogical, extravagant conclusion. My feelings are dictated primarily by the wish to avoid a fracas with the FCC. I won't want to run afoul of the Commission in any way, shape or form. I am willing to pay this exorbitant ransom to extricate myself. I have never, at any time, felt that KRLA per se was guilty of fraud or of misrepresentation. That one of our DJ's unfortunately made minor reference, on his own time and in his own words, to a statement that is not literally true, seems to me to be a poor excuse on the part of our competitors or even the public to charge us with fraudulent advertising. With this, I am sure Bob Laws agrees, I know you do.

Therefore, Ed, inform Greene and Kreps that we are prepared to pay through the nose for our fancied transgressions.

But some day Purcell will get his. And, the good Lord willing, I hope I will be the guy to "give" it to him.

Barnes & Goodwin

I am not quite so confident of the settlement with Barnes and Goodwin. From what little I saw of Barnes I felt he may hang on for the next ten

Memo to Ed Schulz (Cont'd)

October 15, 1959

months to the expiration of his contract. I sincerely hope not but I am prepared for the worst here. I rather think that Goodwin may decently move off our back. I sure hope so.

What has happened to Barnes' threats to expose us? Will our settlement with Purcell emasculate Barnes' threats? What do Greene and Kreps say about this? Jack has already told me of his blackmail tactics. If I were you I would sit down with Frank Pollack in the very near future and learn from Pollack exactly what quotation it is that Barnes is attributing to Pollack. I think this is important. Please send me a complete report of your conversation with Pollack. Pollack will tell you the truth. I believe that he is sympathetic to our operation.

[524]

Programming

I am satisfied that the programming, the sound hour, established on KRLA is ideal. I realize, though, that Herb Heiman must stay on top of the operation every hour, every minute, every second of the day to prevent the lapses, errors and oversights, which DJ's are constantly guilty of. This is a man size job for Heiman, However, I am satisfied that Heiman has the ability to discharge this duty. Heiman's radio or speaker should never be turned off KRLA. He should saturate himself in the work being done by our DJ's. The instant any production, announcement, DJ's chore is less than the standard of perfection we have set for the station, Heiman should roar into action. I want KRLA to be the finest operated station in this country. Only by constant supervision and minute policing of our operation can it be so. I will write you tomorrow regarding the balance of your letter. There is so much more to reply to and to say. I will get this off to you without fail tomorrow.

My thanks for your impressive memo. I have enjoyed it immensely. It is informative and full. From now on, as you say, I can expect more

Memo to Ed Schulz (Cont'd)

October 15, 1959

frequent memos (I would like to receive them each Monday) and shorter ones.

Again, my sincere thanks for this giant round-up.

Warmest personal regards.

/s/ Don

Applicant's
Exhibit 18

[525]

Monday, Oct. 26th, 1959

FROM: Ed Schulz
TO: Don Cooke
SUBJ: Weekly Report

Dear Don:

I held up on this report until I had some specific answers to your questions on a number of matters.

* * * * *

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PROGRAMMING: I agree with your thoughts completely that there can be no feeling of "satisfaction" in programming. This is an area in which constant supervision must be exercised. I can assure you that I personally am never satisfied with our sound, and am always pushing for improvement, as is Herb Hieman. The more I work with Herb, by the way, the more impressed I am with him. He is a hard worker and more importantly an effective worker. Naturally, because of his youth and relative lack of experience, Herb lacks the necessary self-assurance and aggressiveness in dealing with the dee jays. But he is fast over coming this problem as he works with the men. One important point, our dee jays are rapidly developing a sense of unity and co-operation among one another. Each of them is taking a complete interest in the station, their on-the-air work, and we are encouraging their participation

in promotion ideas, etc. Once we get Mickey Schorr squared away in the 6-9 PM slot, and settle Jim O'Neill down I feel that we will have a top notch crew of personalities on the air. Your standards of perfection, sir, will be met.

* * * * *

Applicant's
Exhibit 18

[529]

Ed Schulz
Los Angeles, California

Don Cooke
New York

November 2, 1959

Dear Ed:

I know I can count on you to file the response to the Commission's letter of October 28th within the requested time period. I have no doubt you can satisfy the Commission with respect to the revised program analysis for the dates October 18th through October 24th 1959 inclusive. I must stress that this information must be filed not later than November 4, 1959.

I intend to call Tom Dowd within the next few minutes relative to both the revised program analysis and the Perry Allen promotion. I am sending the signed agreements between KRLA and Purcell to Tom in case Tom wishes to use these in his presentation to the FCC.

Undoubtedly it will be necessary for you and Tom to conduct a number of telephone conversations on the subjects set forth in the Commission's letter of October 28th. Don't spare the horses in this direction. We want to submit the fullest information, described in the most favorable light, consonant with the facts.

I am terribly anxious to know, not only the final resolution of this matter, but to be kept apprised of the progress and development which may occur along the line. My thanks for your close attention to this matter.

Kindest regards,

Applicant's
Exhibit 18

[538]

Ed Schulz
cc Herb Heiman
Los Angeles, California

Don Cooke
New York

December 23, 1959

Dear Ed:

As per our telephone conversation today, this is to confirm that you are going to have Herb Heiman send me an outline of the entire programming plan based on our discussion when I was in Pasadena, during the weeks of November 8th and November 15th, relative to religion, agriculture, education, and community service programming. This refers back to my letter of November 30th in which, on my return to New York, I requested Herb Heiman outline the above in intimate detail.

During that meeting, as you will recall, I had made mention I had advised our former Program Director, Bill Wheatley, in a letter dated June 23rd to be sure to inaugurate a full programming format embracing all the public service proposals that we promised in our proposed format to the FCC. You know how surprised I was that these instructions had not been carried out, and that it was necessary to remedy the situation immediately.

Looking forward to receiving full program details immediately.

Kindest regards,

Applicant's
Exhibit 18

[543]

Ed Schulz
cc Herb Heiman

Don Cooke
New York

January 13, 1960

Dear Ed:

I talked with Tom Dowd and he felt, as I do, that we should adhere strictly to my original instructions to Herb Heiman. We must schedule local church services on Sunday morning even if it means additional cost -- by the way, I think your estimate of \$65.00 per broadcast is terribly high -- I should think it would be closer to \$25.00 per occasion. As mentioned to Herb, these church services should be scheduled on four-week cycles, so it would lower the cost to KRLA. This means, four weeks of the Baptist Church, four weeks of the Methodist Church, four weeks of the Jewish, and so on.

The importance of these local church services cannot be minimized since we expect the Ministers, Priests, and Rabbis, to send us warm letters of thanks and acknowledgment of the services rendered by KRLA. I know I am, perhaps, beating a dead horse as I told you and Herb on the telephone, when I continually stress the importance of carrying out every single request I have made as concerns religion, agriculture, education, and public service.

Tom Dowd has just informed me he expects to be in Kansas City February 1st, and at that time, is contemplating coming into Los Angeles February 2nd at which time he intends and expects to complete all the material that is necessary to put before the FCC. I hope, and expect, to be in Los Angeles next week pending further word from Tom Dowd as to the outcome of our request for a postponement of the response to the FCC 309 letter.

Time is of the essence. I need not say more.

Just in passing, Tom Dowd agrees with me, also, that joining the NAB will not help us in any way.

Best regards,

[544]

Modern Radio - Los Angeles

Applicant's
Exhibit 18

K R L A

January 13, 1960

TO: Don Cooke, Donald Cooke Inc., New York
FROM: Ed Schulz, KRLA Radio, Hollywood
SUBJECT: FCC Religious Requirements

Dear Don:

Confirming our telephone conversation of yesterday, I will send a firm proposal to Tommy Dowd for him to pass on exactly what we propose to do religious-wise.

I talked to Tommy on the phone this morning going over what I had been able to come up with in the religious way and I believe we should be on our way to fulfilling our obligation religious-wise on the basis of this ADDITIONAL religious programming.

1. Unity Viewpoint - "Thought for the Day".

Length: Two minutes and thirty seconds. A professionally produced daily interdenominational "Thought for the Day" produced by the Unity School of Christianity, Kansas City. Schedule: once daily Monday through Saturday, three times on Sunday. Total of ten times - twenty-three minutes per week. Recorded sustaining.

2. The Catholic Rosary Hour. Length: Fifteen minutes.

A show to be scheduled on Sunday morning between 8:00 AM and 11:00 AM on a 52-week basis. This again is a professionally

produced religious show and would be far better than carrying a live Catholic mass since it is produced to appeal to all listeners. Total of fifteen minutes, once each week. Recorded sustaining.

3. The Religious News Reporter. Length: Five minutes.

Produced by the local office of the National Conference of Christians and Jews. This is a world religious news roundup on what is going on in the field of religion in all faiths. This would be done live by the local Radio-TV Director for the National Conference, tentatively scheduled once in the morning and once in the late evening each Sunday. Total of ten minutes per week. Live sustaining.

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4. Congregational Church Services. Length: Sixty minutes.

A one-hour live remote broadcast from 11:00 AM to 12:00 NOON each Sunday on a remote basis from the Pasadena Congregational Church. This would be the regular Sunday service and would be scheduled for a period of 13 weeks. Successive 13-week cycles would be devoted to other Protestant faiths such as Baptist, Methodist, etc. Total time: One hour per week. Live remote sustaining.

Don, this comes out to a total of one hour and forty-eight minutes of ADDITIONAL regular religious programming added to KRLA's schedule. Naturally we would continue the present "Spirit of the Day" and "The Sound of His Music" which are currently running on KRLA. I personally have gotten commitments on each of these programs. All of these will start Sunday, January 17th with the exception of the Congregational Church which will start Sunday, January 24th.

Please let me have your immediate approval or disapproval of this plan.

Best regards,

/s/ Ed

* * *

Modern Radio - Los Angeles

K R L A

January 14, 1960

Mr. Don Cooke
666 Fifth Avenue
New York 17, N. Y.

Dear Don:

I am enclosing herewith a tentative schedule of all religious and public affairs programs firmed-up as of January 14th. The attached outline will show how these shows are blocked out on the Sunday schedule. In between the various religious shows we are scheduling Wonderful Weekend which will air our regular sound format of news at 0:55, Sports at 0:15, mid-hour headlines at 0:30 and Weather scope at 0:45. In addition we will give special emphasis to Recreation Scope for weekend outdoor activities.

Subsequently, since we could not run the Perry Allen and Roy Elwell Shows in their regular program format from 6:00 - 9:00 AM and 9:00 - 12:00 AM we are substituting Wonderful Weekend which gives a musical sound hour to the six hour period between 6:00 and 12:00 Noon. This also gives us plenty of time available for additional religious, discussion and educational programs as they are produced. Not shown on the chart is the re-play of "Spirit of Today" which is also run between 11:30 - 12:00 Midnight Sunday night.

All told the religious shows on this tentative schedule will give us approximately 2.1% religious time (3 hours 15 min.). I am also showing on here a discussion program "Scope Unlimited" which will be a 30 minute discussion show produced by Bill McMillan our KRLA News Director. This will cover discussion of timely subject material of immediate interest to Southland listeners. Bill McMillan and I have discussed this very carefully and I am certain he will do an excellent job on "Scope

Letter to D. Cooke (Cont'd)

January 14, 1960

Unlimited". All the religious shows are firmed up and will be run on the dates shown.

In order to continue to expose our complete disc jockey group we will run them at two hour blocks rather than their usual three hour blocks. This will greatly relieve our present programming schedule on Thursday, Friday and Saturday and will give Herb Heiman the time and opportunity necessary to produce the various religious shows on the early morning block on Sunday.

Herb Heiman is working right now on the production of an educational lecture series which is tentatively scheduled from 9:00 to 9:30 AM. He will use professors from Occidental College, Pasadena City College and Los Angeles State to produce this program. The first broadcast on this will be Sunday January 31st. We are also working on adding an additional public affairs show such as Town Hall Meeting, etc. which will be aired across-the-board in the evening schedule. (Handwritten: What time and days?)

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Please understand, Don, this is just the initial approach to religious discussion and educational programs in the public interest. Don, I must have your thoughts as soon as you have a chance to go over this. I talked to Tommy Dowd and he gave me his tentative verbal approval to this approach. You will probably want to discuss this with him at greater length. Please let me have your thoughts.

Regards as always,

/s/ Ed Schulz

* * *

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Modern Radio - Los Angeles
K R L A

March 1, 1960

Mr. Donald Cooke
666 Fifth Avenue
New York City 17, N. Y.

Applicant's
Exhibit 18

Dear Mr. Cooke:

In the few weeks that you have been away from KRLA, we have installed on a working basis, all of the program features we talked about. California is now running nightly through the week, with the first two weeks devoted to Cal-Tech Jet Propulsion Laboratory. Prominent scientists, such as Dr. Albert Hibbs, Dr. Eberhardt Rachtin, Mr. James Burk, Mr. Richard Davies have taken part in the series. Others scheduled for California are research figures from Douglas Air Craft Company - Aero-Jet Co., Marquardt Engineering Company, with thinking now running along the line of adding a weekly ten minutes by Governor Brown, Mayor Norris Poulson and other prominent civic personalities. These have yet to be developed.

Scope Unlimited over the past three weeks has had Vice President Richard Nixon, Governor Brown, Commissioner of the California Highway Patrol Bradford Crittenden, Cal-Tech Scientist Richard Davies, State Police in Uniontown, Pa., Clerk of the US Supreme Court, William Sullivan, Mr. George Davis, attorney for Caryl Chessman, Assemblyman Edward Elliott, Assemblyman Charles J. Conrad as guests.

The Big Story has run several days, using Norm Woodruff, a freelance reporter with feeds directly from the county court house on an hourly basis. Big Story is used on the days when particular interest is generated in the trial. On other days, Woodruff's reports are included in the hourly newscasts. Of particular interest to me, in regard to Woodruff, is the way he was able to take over duties in the news room, pulling a full shift for a period of three days, when one of our newsmen was out

Letter to D. Cooke (Cont'd)

March 1, 1960

because of illness. Both Herb and I were extremely pleased with the job turned in by him.

February 16 I went to Sacramento to line up a radio correspondent. I feel that I was fortunate in securing the services of one John Stroble. Stroble works now for KGMS in Sacramento as head of the news department. His reports from the Capitol have been concise, clear, and extremely well done. He is also able to record statements from the Governor then feed them down the line to us, with the result being, good quality statements from the Governor, which has in turn put us ahead of the opposition by as much as a full day. We talked about a fee for the Capitol Correspondent and Stroble and I settled on a \$3.00 per feed payment, with which he is happy, makes a little money, and we have the type of radio service from the state capitol that I feel is adding the depth to our news department that is lacking in other stations.

The Sacramento trip was valuable in other respects. Talking with the Governor's press secretary, Hale Champion, resulted in KRLA news being added to the Governor's "A" list. We now receive daily packets of information concerning capitol happenings that keep us first in the market on news of interest to the entire state.

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I covered Vice President Nixons press conference, with a subsequent feed to the station, in which a statement was used from the Press conference. To my knowledge, no other Los Angeles station had the coverage. Later in the day, the first Supreme Court ruling against Chessman, that statement I fed immediately - had it on the air, before the other stations. The following day, I went to San Francisco, covered the Supreme Courts second ruling in the Chessman hearing, the story direct to KRLA, and we beat the bulletin service of Associated Press by about 15 minutes. Again first with the big story of the day. From the State

Letter to D. Cooke (Cont'd)

March 1, 1960

Supreme Court I went to the office of Chessman's attorney, George Davis, recorded enough from him to feed back to the station and also use on Scope Unlimited, and while other newscasts were talking about the four to three ruling by the Supreme Court against Chessman, KRLA had Chessman's attorney on the air, detailing the processes by which he was continuing the fight to save Chessman's life. So in the two days I was on the go, KRLA had four top stories first, and we secured the services of a top notch stringer, at what I feel is a reasonable price, perhaps even less than reasonable.

To complete the picture of News Room happenings, I am happy to report that a girl has been hired on the basis discussed, and now the April First deadline which I offered as the date by which the newsroom would be functioning smoothly seems much an over-estimate. I'm not satisfied yet with our contribution to KRLA, but I do feel that much progress has been made and we are finally stepping out in the right direction.

I'll be looking forward to seeing you soon.

Warmest Regards,
/s/ Bill McMillan
Director of News
KRLA

* * *

Modern Radio - Los Angeles
K R L A

September 26, 1959

Don Cooke
666 5th Avenue
New York 17, N. Y.

APPLICANT'S
EXHIBIT 19

Dear Mr. Cooke:

This past week KRLA has taken its first giant step! General policies have been set with regard to staff responsibilities, objectives of the station and my own personal functions.

Enclosed are three major lists of details those that have been accomplished, are in the process of completion or are soon to be under way. Also included are memos of importance, weekly production schedule, weekend recording schedules (to incorporate the six day Disc Jockey week), list of distributors and their respective labels, new personnel lists and the announcers "on the air guide".

Successful progress has been made in all phases and I am very optimistic as to the effective results of KRLA in the Los Angeles market.

Thank you very much for the confidence you have shown in selecting me to fill the position of Production supervisor.

Sincerely yours,

/s/ Herbert M. Heiman
Production Supervisor

* * *

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Applicant's
Exhibit 19

Modern Radio - Los Angeles
K R L A

October 4, 1959

Mr. Don Cooke

Dear Mr. Cooke:

The memos with your ideas and suggestions have been gratefully received and we are putting many of them into practice immediately. However I am still handicapped by a few of the basic problems that confronted us a week ago:

- 1) A weak, short staffed news department.
- 2) Sloppy mental approaches here and there by the Disc Jockeys.
- 3) Not been able to put full trust in the continuity department.
- 4) The discouraging problems involved in trying to obtain 1,000 of the "Pick to Click" each week.

On the positive side, which far outweighs the above, we have good workable schedules for the news men, engineers, production and weekend

recording. With a minimum of errors this past weekend we aired eighteen full hours of shows with live cut-ins by the newsmen. Although the taping procedure must be improved, we are off to an excellent start.

A list of most Los Angeles areas (which is enclosed) is now included by the Dee Jays in their weatherscope. We can gain enthusiasm among our 50,000 watt audience in this manner. On the reverse of this plastic covered sheet will be enclosed cute station breaks and ID's, some of which you sent us in your last memo. Our Dee Jays need never be at a loss for words.

You may expect a 15 minute telescoped air check of each of our five Disc Jockeys which will include KRLA saleable features. These tapes will be used by the local sales staff as well to give a quick sample of our

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excellent KRLA personalities.

Fine standee cards to house the top 50 list each week, along with a letter of explanation have been sent to more than 30 retail record shops. We expect great results as you might guess by reading the enclosed letter.

Ed Schulz and I have worked up dual presentations for each other concerning promotions and contests for the remainder of the year. We are especially excited about a possible tie in on a sixth Dee Jay and a Halloween gimmick. More about this meeting next week.

We are incorporating thirty seconds of a morning news cast to a Farm Fair... of interest mainly to the consumer rather than the farmer. Also a package is being prepared to make this a salable item to a large food chain using the obvious tie in.

I really think Frosty's idea to cash in on the local High School football scores Friday afternoon and evenings is great. We must move on it this spring.

Looking forward to further exchanges of ideas.

Sincerely,

/s/ Herb

* * *

Modern Radio - Los Angeles
K R L A

October 18, 1959

Donald R. Cooke
666 Madison Avenue
New York 19, N. Y.

Dear Mr. Cooke:

More problems solved . . . more problems arise, however the solutions are bringing order out of partial chaos. In the last meeting between Ed and myself some major decisions were reached which we feel will help KRLA run more smoothly. It was obvious we couldn't procure 1000 of every weeks "Pick to Click", for we are still short a great amount on three of the last five records selected. From now on the announcements will read, "if your card is selected from among the first 1000 post cards sent in, you will receive a copy of this weeks KRLA Pick to Click."

We are aware of our great appeal to the teenagers and must cultivate their partisanship for KRLA even more than before. A big push is being made in the Frosty Harris show starting this week. Each evening from 7:00 to 10:30 p.m. KRLA will salute a high school. We will make contacts at each major school to phone in the football and basketball scores on Friday evenings, then report same on the air.

Frosty Harris is actively taking part in the program and we are going to "give him his head", so to speak, to see how this promotion works. For this reason plus many more, Ed and I have agreed to renew his present contract for thirteen weeks more. I'm sure you'll agree with us.

KRLA is sponsoring a "Jim O'Neill" hunt on Halloween night for the youngsters. The gimmick is simple, "Trick of treat, I'm a KRLA

ghost, is Jim O'Neill here?" There will be about 25 gift packages all over the city and Jim O'Neill at one house. The first youngster to find Jim gets a day at Disneyland with his friends and Jim to spend \$110. More details next week.

We are still in dire need of another Dee Jay and I receive at least three requests for employment in this line daily from aspiring young men. I am sincerely interested in a few such applicants. Although we have no doubts about young Jim O'Neills talents, he must still be constantly worked with and spoken to. He can easily turn my hair grey. I continue to remain optimistic!

Looking forward to your next letter.

Very truly yours,

/s/ Herb

* * *

Applicant's
Exhibit 19

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Herb Heiman
cc Ed Schulz

Don Cooke
New York

October 26, 1959

Dear Herb:

Naturally I am disappointed that you have not kept your promise to write me each Friday regarding the progress of KRLA's Programming Department. Even if you feel there is nothing to write about, I expect you to drop me a short note to that effect that there is nothing new. Surely it is no great problem to sit down before the typewriter and bang out a few words describing the progress of the Programming Department.

For instance, it was necessary for me to ask Ed Schulz this morning about Mickey Schorr. You should have kept me abreast of the developments with Schorr, had you done so we could have proceeded a week earlier with chores that I am about to ask you to do.

There is no risk in my plugging this point, I want a weekly report from you each Friday night so it will be on my desk each Monday morning. This is a firm instruction.

Now to the other matter at hand: I want you to get in touch with disc jockeys at top-flight operations such as:

WHB - Kansas City, Kansas
 WDGY - Minneapolis, Minnesota
 Other Storz operations

Applicant's
Exhibit 19

Any other operations you know are top flight and obtain tapes of their leading dj's. You should do this at once. If Schorr does not come with KRLA you will need these tapes in order to hire the best man possible for the 6:00 am to 9:00 am shift. Even if Schorr does come with us, you should have this information for future reference. Please start on this at once and keep me apprised of the

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tapes you get. I would like you to send me copies of the tapes of the better dj's.

none
 11/2/59
 11/2/59

As Ed has probably told you, I frequently receive tapes of KRLA's operation. I like the sound of the station. There are many minor lapses and errors, but I feel sure you will work hard to make KRLA the almost-perfect radio station which I believe it can be.

Is Perry Allen leaning too heavily on the gags? You will recall I wanted him to try for a proper balance between the gags and straight dj work. Is Perry Allen moving as far and lively as he is capable of? I wonder. I think perhaps his pacing suffers somewhat. You have had the benefit of listening to him regularly and I would like to hear your reaction.

11/2/59

Is Jim O'Neill spending enough time in the preparation of his shows? 11/2/59

How is Bob Cole doing in your opinion?

Roy Elwell continues to do a fine job, don't you think?

What is your opinion of Frosty Harris' work? What do you and Ed propose to do about renewal of his contract? For what length of time will you renew it if you decide to do so? 11/2/59

There are many more questions that I have regarding our program operation and it is essential that I be kept informed.

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I would like you to make it a practice not to leave KRLA Friday night until you have your weekly report off to me. I will expect it, without fail, each Monday morning.

I look forward to seeing you soon.

Best regards,

* * *

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ELEVEN-TEN BROADCASTING COMPANY

DATE: October 26, 1959

TO: Don Cooke

Applicant's
Exhibit 19

FROM: Herb Heiman

SUBJECT: Progress report

Contests:

The Halloween promotion which was referred to in the last memo to begin this week was put off so as not to conflict with the giant "secret name" contest to start November 2nd. The teaser campaign was set for Wednesday October 28, 1959 but it now appears we will have to delay a week until the prizes get firmed up in trade outs. Enclosed are the memos sent to staff and Disc Jockeys to fully explain the details.

We received a special delivery letter from Hal Cooke requesting information on the telephone promotion currently running. I sent him a tape and complete procedure immediately.

Music:

We are beginning to get into the pattern of consistently good Top 50 lists each week at last. The "Picks to Click" are all pulling in excess of one thousand cards and showing up on the lists for two reasons - we picked them, and the choices are good ones. Nature Boy is beginning to show some action Sid Talmadge reports.

Record Hops:

Frosty Harris and Jim O'Neill both have negotiated agreements for two of the very big dances for Halloween night. I'm anxious to see the results of our publicity and their names as drawing cards.

Public Service:

Following through on Ed Schulz's suggestion we are now promoting 3 or 4 Public Service campaigns, each 2 or 3 weeks. Each one receives a saturation campaign over their allotted time. Enclosed is a sample letter sent to one recipient of this service. In the news twice each day are farm reports, once, the closing Dow Jones averages and as a 5 day featurette is the "KRLA Best Buy of the Day" a tip to consumers from U.S.D.A. on produce entering the wholesale markets in abundant quantity.

More on contests and hops next week.

Warmest Regards,

/s/ Herb Heiman

* * *

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Applicant's
Exhibit 19

Modern Radio - Los Angeles
K R L A

October 28, 1959

Mr. Don Cooke
666 5th Avenue
New York 19, N..Y.

Dear Mr. Cooke:

This is just a short note of apology for the delay of my memo of October 18, 1959. As you have probably noticed with the arrival of two memos almost simultaneously there was an unfortunate error made when addressing the earlier message.

After floating around New York for a week with the 5th Avenue deleted from the envelope, it was returned to me on Monday October 26, 1959.

I comprehend your extremely keen interest in the operation, particularly since you have only two pair of eyes here, Ed Schulz and myself. I will not be tardy again - except perhaps when my wife has the baby. Seriously, you may expect memos promptly each Monday morning. I'll answer your questions in full at the week's end.

Sincerely,

/s/ Herb Heiman

* * *

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ELEVEN-TEN BROADCASTING COMPANY

DATE: October 31, 1959

TO: Don Cooke

FROM: Herb Heiman

Applicant's
Exhibit 19

SUBJECT: Progress report

MICKEY SCHORR

As of this moment, Ed Schulz seems on the verge of hiring Mickey Schorr from WXYZ. We both met him last night and were very impressed with his business-like, salesman-like approach to the job at hand. We are seriously considering using him to the fullest advantage of his abilities in the three to six PM slot. He is going to be the icing to KRLA's air personalities.

DEE JAYS

In answer to your questions about our air-men:

Elwell -- more relaxed, warmer than ever. He's in the perfect spot.

Cole -- Although Ed feels Bob is "bubbling" better than ever, I still get a slightly unnatural, put on feeling about him. He has improved a great deal in mechanics.

Harris -- More vitality and interest in his show and the station than any of the others. He has broken away a slight bit from the

"ever-steady, grind-em-out" pacing and phrasing he had. Will be an asset to keep in some capacity.

Allen -- Your diagnosis was identical to ours. You will find a memo enclosed which I sent him to curb some of his antics and force him to use discretion in his use of wild tracks. There is a vast improvement from this standpoint already.

O'Neill -- Jim makes the same stupid errors the second, third and fourth time he is corrected. He has at last started to pitch his show to the three groups covered during his time, at the right times, (kids, traffic and supper). His lack of really great salesmanship on the air due to inexperience may prove costly to KRLA. This is another excellent reason for considering Schorr for this post.

POPULARITY

I can't begin to tell you how optimistic every individual here feels due to the obvious growth of KRLA's popularity.

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1. Record retailers call us to be certain we mail them much sought after Top 50 lists.
2. Distributors tell me all other AM stations are monitoring KRLA.
3. The volume of word of mouth notoriety is simply fantastic. I hope you can visit soon and "feel" with us the grip we are taking on the youth of this area.

NEWS

Newsmen have erratic pacing, but still turn in fairly creditable work. Ed will send you full information on the hiring of news director - McMillan. We can certainly use him.

FCC

A letter from the FCC arrived informing us that the analysis sent in by Mr. Wheatley concerning a composite week, was incorrect. We must

re-do the entire breakdown on week of October 18 through 24 to be done this weekend. Ed will probably fill you in on the details.

CONTESTS

We will try to take advantage of Mickey Schorr's arrival by promoting the "Secret-Word" contest at the time he kicks off his show on KRLA.

I'll send you the full information regarding the above paragraph in the next memo. Hope this one answers many of your questions.

Sincerely,

/s/ Herb

Applicant's
Exhibit 19

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OFFICE MEMO

November 5, 1959

TO: Herb Heiman

FROM: D. R. Cooke

Copy to Ed Schulz

SUBJECT:

Thank you for your interesting and informative progress report of October 31st. This is more like it.

MICKEY SCHORR

Please do not schedule Mickey Schorr 3:00 - 6:00 PM until after we have had an opportunity to study the Hooper ratings which should be out this weekend. I repeat, do not replace O'Neill in the 3:00 - 6:00 PM slot until after we have consulted the ratings and are satisfied that either:

(a) Jimmy's ratings are low, or

(b) Jimmy's ratings are high

Apart from his peccadilloes, the ratings are what really count.

DJ's

I was delighted with your brief descriptions of each of the DJ's. Pleased to hear about Frosty Harris. Sorry to hear about O'Neill. But in all the fuss and bother, what happened to Frank Pollack? Is he still talking

too much or have you been able to get him into the same neat, effervescent groove you have the other boys?

NEWS

I have worried constantly about the newscasters' lack of polish and finesse. Based on the tapes you sent me and the ones I have received from my source in Los Angeles, Ed is guilty of erratic newscasting delivery. Sometimes he's smooth, other times disjointed and he is guilty of altogether too much stumbling and a failure to enunciate certain words properly, let alone clearly. No doubt MacMillan will whip the news staff into professional shape and ride herd on their air work.

Again, my sincere thanks for a most welcome memo.

/s/ Don

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1110 CORPORATION

DATE: November 27, 1959
TO: Don Cooke
FROM: Herb Heiman
SUBJECT: KRLA Progress Report

Applicant's
Exhibit 19

BOB ELLIOT

As per our conversation on Wednesday, I contacted Elliot in Kansas City. He is most agreeable to our terms including his paying for the move. Ed is having the contract dittoed to send with a personal letter to Elliot. He can be here by Christmas so we are planning to have him on the air the first of the year.

RATINGS

Although the November Hooper was disappointing, Ed and I have attacked the problem of Elwell and Allen pursuing the lines of added pace and

vibrancy to each. We'll actually have a more accurate report in the January Pulse.

NEWS

Bill McMillan's arrival put a scare into Ed Perry, but Ed Schulz has put him at ease. There is no doubt that our impression of Bill was right. He will help make KRLA's, the best news staff in L.A. He's a nice guy and takes suggestions well. His air work, although just starting needs a great deal of work, (familiarizing himself with the surroundings).

CONTEST

The secret word contest is under way and next week will start to show results. The ad, enclosed, is decent but I feel it's too "Rexall Hard Sell" looking. The Dee Jays are swinging into high gear and starting to have fun with it on the air now.

ENGINEERS

Frank Goodson is a problem with careless air work - he's creating on the air errors which are unforgivable. The others are working into the swing of things much better. The McKenzie Cartridge repeater is giving us a great deal of trouble with many mechanical failures. This is being looked into.

PERSONAL

"We sure hope you enjoyed your visit. Best regards from Elayne and myself.

/s/ Herb

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ELEVEN TEN BROADCASTIN CORPORATION

DATE: December 11, 1959
TO: Don Cooke
FROM: Herb Heiman
SUBJECT: KRLA Progress Report

Applicant's
Exhibit 19

BOB ELLIOTT:

As per our conversation today Elliott's lawyer has sent Ed a letter covering the proposed changes in the contract. Ed will then go over them and re-negotiate with Kansas City. I imagine that unless a fast agreement is reached we will not get Elliott on the air by January 4th.

AIR CHECKS:

Ed and I are going over air checks of all the Dee Jays in the morning to list the mechanical difficulties which have been overlooked by just listening to on-air work. There is a repetitious lethargy about the station's sound. We need guts and we intend to get them. This weekend I am preparing the following:

1. Produced Public Service spots with sound and or music.
2. A complete set of recorded promos for the news dept.
3. A complete set of recorded promos for the news tip awards.
4. A set of brief cute cross-plugs
5. A set of Promos for the "1110 men".
6. A better news & headline open.
7. Anything else needed for change of voice pattern, to lend excitement to the sound of the station and psychologically to the Dee Jays.

CONTEST:

With the hyped contest promotion our mail has reached an estimated 10,000 plus and will go between 20 and 25 thousand. Somewhat

disappointing - but not too bad. I have an exciting plan for the contest awards on the air, however I'd like to go over it with Ed first. Complete details next week.

RECORDS:

Ed has forwarded copies of the memos given to all studio personnel, so there need be no further remarks other than the fact that there are no problems here on the non-existent payola situation. I've learned the record distributors have all signed a pledge among themselves to be above board on all their actions.

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The Capital-Dinah Shore promotion record is still uncut. Ed has bugged them on it but it seems that she is taking her sweet time about it.

PROMOTIONS:

KRLA is participating in the Santa Claus float on Hollywood Blvd. Wednesday the 16th. All the Dee Jays, Santa, signs and a pretty girl will ride down the Blvd.

The Dee Jays plugged a Teen dance and show at a local night club for last Sunday afternoon exclusively on KRLA. Jimmy Madden's Sundowner was the location and it was packed. Of course only soft drinks were served. It was so successful that two shows are planned for this Sunday. It's a worthwhile enterprise.

MUSIC:

This is a topic of extreme importance and my remarks to Ed as well as you were directed so that we will all be attentive to the possible trend in new music tastes. After the Pulse comes out, this subject may be very worthwhile discussing at length.

Till next time.

Sincerely,

Herb

P.S. How about Mickey Schorr being fired!

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ELEVEN TEN BROADCASTING COMPANY

TO: Don Cooke
FROM: Herb Heiman
DATE: December 26, 1959
SUBJECT: KRLA Progress Report

Applicant's
Exhibit 19

FCC:

As per your instructions, a complete file on our religion and programming performed in the public interest was mailed to you special delivery. I trust the information is precisely that which you needed. As you know, the claims made by the FCC are unfounded and obviously mis-directed due to the notions of a past employee.

HOLIDAY PROGRAMMING:

Christmas eve and day Holiday music was mostly aired along with taped Public Greetings for the Holiday. We will continue with New Years greetings on Tuesday, December 29th and run them thru New Years. On Thursday December 31st, the Jim O'Neill show will air the Top fifty songs of 1959. The sound on the air is much improved and we are not letting up the pressure. Starting January 4, 1960 we are starting a car payment promotion. The third week in January a big push will be on to find and promote a KRLA leap year Queen. I'll mail you copy and details of both promotions.

COCKTAIL PARTY:

To induce a higher degree of esprit de'corp among our "oddball" troops, a Christmas party was given. It met with somewhat mixed results -- most had a nice time, others took the opportunity to blast away on past station difficulties. Ed said he underwent a certain degree of enlightenment as far as our personnel is concerned!

SECRETARY:

A new girl who will split chores between being a receptionist and private secretary has taken Carol's position. Thus-far she is quickly efficient and has been a great help to me. I'm quite confident she will work out just fine.

DEE JAY:

Nothing really exciting in the way of air-checks has come in. Bill Bradely, the fellow who contacted you, is coming in to cut on air-check next week along with some other applicants. I'll let you know what the results of the tapes show.

Elayne and I hope you had a most pleasant Christmas and will have a very happy New Year. We have no results yet in the baby making business - but will soon.

Best regards,

/s/ Herb

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ELEVEN TEN BROADCASTING CORPORATION

DATE: December 31, 1959

TO: Don Cooke

FROM: Herb Heiman

Applicant's
Exhibit 19

SUBJECT: KRLA Progress Report

DISC-JOCKEY'S:

As you know, Don, through our conversations and those you had with Ed there are basic problems involving Bob Cole and Perry Allen -- mainly due to their off-the-air disposition. There is no longer any doubt that they have and will spread malicious rumors detrimental to the station. How long they choose to remain with us is questionable and

may be answered only by them. We are in a vulnerable position until we hire two additional DJ's. Ed and I have on hand about a half dozen excellent leads. A decision must be made as soon as possible. Your help in this matter will be appreciated.

PROGRAMMING:

In spite of internal tremors the station has never sounded better but it has a long way to go. Added to the promotions referred to in the memo of two weeks ago are the Weekend Weather-Scope; Recreation-Scope; Frosty's Frost Warnings; five complete weather breakdowns for the area and now, at last the U.P.I. Sports-Line.

All these features are salable and I'll be happy to send presentations or air checks for prospective clients.

PUBLIC SERVICE:

Our Public Service campaigns have proven to be remarkably successful as attested to by letters of gratitude from a number of organizations we helped. Along these lines the KRLA Christmas Family received from our listeners over \$40.00 in cash; \$50.00 in groceries and about thirty boxes filled with gifts, toys and clothing.

As of New Year's Eve Elayne is on the brink - but no results yet.

Warmly,

/s/ Herb

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Applicant's
Exhibit 19

ELEVEN TEN BROADCASTING CORPORATION

TO: All personnel FROM: Herb Heiman
SUBJECT: F.C.C. Station Logs DATE: December 30, 1959

There has been an extreme lack of understanding as to the importance of our daily logs. They are Federal documents which may not be mutilated

or changed without proper authorization. Under no circumstances will any log be taken from the premises; a portion separated from the remainder or handled by unauthorized personnel.

Below is a list that must be explicitly followed every day:

1. Frosty Harris must leave the completed, signed, Disc Jockey and Engineer logs on Janice Crosby's desk each night. In the event he is taped it is the responsibility of the engineer to do this.
2. Frank Pollack will pick up the Disc Jockey and Engineer logs from Janice Crosby's desk for the new day. On Mondays Perry Allen must do this.
3. Disc Jockey logs will never be pre-timed.
4. Engineers will keep the Engineer log intact and un-mutilated by markings. They will simply sign at the time they come on and off and clearly check each item as it is aired. No timings are required on this log.
5. For each taped show the Disc Jockey is responsible to pick up and leave the log on Janice Crosby's desk. The engineer should just sign the Dee-Jay's log and when the tape is aired the engineer's log will be signed and each item checked by the engineer on duty for the airing of the taped show. Items such as inserts or news must have time and signature on Disc-Jockey's log by the engineer.

There is no joke or humor intended in this matter. It is very serious and must be strictly adhered to.

/s/ Herb

Dee-Jay Meeting Notes

December 28, 1959

I PROMOTIONS

A. Valentines Day Promo - Send in your gal's (guy's) name and KRLA will send 1110 boxes of Valentine candy. Start Jan. 13 (KRLA draws from cards received.).

B. Car Payment - KRLA pays for someone's car payment drawn from among those cards submitted each month. Start Jan. 4th. Teasers start Dec. 29th.

C. KRLA Working Girl of the Day - Each hour from 9-5, Monday - Friday, KRLA awards a working girl an orchid, given by trade-out agreement. Promo 24 hours a day - names announced each hour from 9-5. Best letters describing working gal gets flower. Date to be announced soon.

D. Teacher of the Week Award - Best letter each week about deserving teacher wins for the teacher a huge basket of fruit and an album for the sender. Award made weekly at school. Date to be announced soon.

E. Name Perry's Aardvark Contest. KRLA will buy an aardvark and donate it to the new zoo. Compete by sending in a card with the name you pick for Perry's aardvark. Winner gets name on placque at zoo and a tangible prize. Details to be worked out as soon as possible.

II WEATHER

Every effort must be made to have complete weather information available at all times. Frosty must have "Frosty's Frost" warnings produced. He will give a 9:45 complete local frost warning when weather calls for it. During all shows spot weather for southland.

"Have a Beautiful Weekend" must be ready for use on both live and taped shows at every '45.

III Recreation-scope - "Let's Get Away From It All" theme to be produced open and close for ski and snow reports, beach and water, etc.

Applicant's
Exhibit 19

[585]

January 4, 1960

Herb Heiman

Don Cooke

Ed Schulz
Tom Dowd

Dear Herb:

Thank you for your report on the public service and religious programming scheduled by KRLA. So far as it goes, well and good. However, I want very much to put our public service house in order, exacting order, well before January 15th. I say this because I hope to include in my response to the FCC letter of December 16th, a fulfillment of the promises of my FCC submission of November 20th 1958.

I will never understand why the public service programming was not started as promised. You all know how often I have written and spoken about the necessity of starting the full public service campaign. However, I blame myself - I am the one finally responsible and I should have ordered the programs to be started, as I now find it necessary to do.

According to my records (Exhibit 11 to the FCC, the proposed typical program schedule and memos from you), the status of our public service is as follows:

RELIGION

Promise to FCC: "KRLA will not accept sponsored religious programs".

Fulfillment: KRLA has kept this promise.

Promise to FCC: "A daily inspirational message broadcast early in the morning (5:59 am)."

Fulfillment: Since the second week of October, according to your report, KRLA has broadcast "Word For the Day" daily Monday through Saturday 6:28 am. We were late in fulfilling this promise but, at least, it has been running for two and a half months.

In addition, on December 8th 1959, KRLA began a five-minute feature "Sound of His Music", Monday through Saturday at 5:50am. According to your report, this is a presentation of spiritual classics sung by such artists as Marian

[586]

Anderson, Mahalia Jackson, The Mormon Tabernacle Choir, etc. Although the show did not start until December 8th, at least it is on the air and will continue until forbid.

Good work, Herb.

Promise to FCC: "Religious programs will be confined to the period 6:00 am to 12:00 NOON Sundays. A religious service of a different denomination (in rotation) will be broadcast each Sunday, thus giving each religion an opportunity to communicate with the public served by the station."

Fulfillment: Apparently we did nothing to fulfill this promise until as late as December 6th, when we produced and broadcast a taped show in cooperation with locally recognized seminaries, bible colleges and academic colleges.

Each program, according to your report, presents the application of the Holy Scriptures to today's life and arts. This program, half an hour in length, is broadcast Sundays from 6:00 am to 6:30 am and the same program is apparently repeated at 11:30 pm to 12:00 Midnight (shouldn't this be 11:55 pm?) of the same day.

KRLA has fallen short of its promises, both in the number and starting dates of religious services. If you will turn to Exhibit 11, "Proposed Typical Program Schedule" for Sundays, of my application to the FCC, you will note we proposed religious programs at the following times on Sundays:

6:05 to 6:30 am	9:05 to 9:25 am
6:31 to 7:00 am	10:05 to 10:30 am
7:05 to 7:25 am	11:05 to 12:00 Noon

You will also note that I promised to broadcast a church service 11:05 to 12:00 Noon on Sundays. Obviously, we are not doing that.

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Instructions: I want you to schedule a church service from 11:00 to 11:55 am each Sunday beginning at once. The different denominations will be rotated. We have remote control equipment and I will expect that these broadcasts will begin Sunday January 10th. Herb, do not fail me. I want to report to the FCC that we are broadcasting the promised church service at 11:00 to 11:55 am Sundays and also "Spirit of Today" Sundays from 6:00 to 6:30 am and 11:00 to 12:00 Midnight.

AGRICULTURE

Promise to FCC: "KRLA will schedule a one-hour program each week for the farm audience." (Although the promise made is in the preamble to Exhibit 11, I cannot find the hour in the program schedule which follows. However, we promised it, and therefore we'll do it.)

Fulfillment: No fulfillment whatever, according to my records.

Instructions: We should schedule a one hour farm audience program once a week at, say, 5:00 am to 5:55 am on, say, Monday mornings. The program could feature songs from the Western Hit Parade, along with the regular diet of KRLA music. In addition, the DJ should give farm market prices, weather conditions of interest to farmers, product prices, etc., etc. There is no problem to beginning this program without delay. You have all the material.

I will expect this program to be started within twenty-four hours following receipt of this memo.

Promise to FCC: "Bulletins highlighting farm market prices, weather conditions of interest to the farmers - such as storm

and frost warnings - will be broadcast on every newscast twenty four times a day."

Fulfillment: KRLA has failed to incorporate farm news in its newscasts. I will never understand why, but the fact is they have not done it.

Instructions: Beginning at once, will you instruct McMillan to incorporate thirty seconds of farm information on every newscast twenty four hours a day. The information should be sugar-coated, made palatable to your urban listeners - as a matter of fact, the housewife may be extremely interested in the prices of farm commodities. I expect the farm market content in the newscasts will begun without delay.

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EDUCATION

Promise to FCC: "KRLA will schedule at 10:45 pm nightly, the program, "Town Hall", on which exponents of culture, science, technology, etc., will speak."

Fulfillment: KRLA has done nothing.

Instructions: Herb, I want you personally to take this under your wing. I am convinced there are all kinds of scientists, scholars, technologists, etc., who will leap at the chance to broadcast a ten-minute talk, panel discussion, or what-have-you, on a 50,000 watt station in the Los Angeles market. I see no problem obtaining the speakers. You could start at UCLA and before long, I am sure, you will have a list of speakers a yard long. I have faith in your ingenuity to develop the program so that it becomes a worthwhile show - educational, inspiring, and yet easy to listen to. Properly handled, other stations in the country will want copies of the tapes we broadcast. Give this your personal attention and you will create a top-flight "Town Hall". How soon do you think you can start? I hope you can do it well before the deadline date, January 15th.

Promise to FCC: You will note I also promised to schedule the following education shows on Sundays:

"7:31 am to 8:00 am - "Report on Education"

"8:31 am to 9:00 am - "School Speaks"

"10:31 am to 11:00 am - "Youth Talks"

Fulfillment: We have done nothing.

Instructions: After, only after, you have carried out the other instructions of this memo, I will expect you to begin to produce the education shows, or reasonable facsimilies, which we have promised. In connection with our failure to broadcast these particular shows, I shall beg the indulgence of the FCC, meanwhile promising that they will be on the air as soon as we are able to produce and present them.

Promise to FCC: "The program schedule for Sundays, promises to broadcast a discussion program, "Roundtable" from 9:31 am to 10:00 am.

Fulfillment: We have not done this.

Instructions: We will have to postpone this show and those immediately aforementioned until after we have organized the rest of our public service programs.

COMMUNITY SERVICE

Promise to FCC: "KRLA plans to schedule each night at 10:40 pm, Monday through Saturday, the program "Town Crier" in which will be broadcast announcements and information highlighting the events of the community: charity, hospital, church, and civic organizations. The station will not only offer its facilities to these civic groups, but will develop and broadcast information of their activities which the station believes will be of general interest to the public."

Fulfillment: In view of the excellent community service programming you have done beginning as early as September 9th, 1959, I would think that the FCC will forgive our failure to broadcast the program "Town Crier". I think we can well argue that the spot broadcasts you are scheduling are more effective than the five minute show originally contemplated. In short, I think our fulfillment is better than our promise.

According to your report, you are broadcasting:

"Crime Beat" - begun September 9th 1959, eight times daily; one minute in length; transcribed and live messages reporting wanted fugitives of the Los Angeles Police Department and the FBI.

"Best Buy of the Day" - begun October 15th 1959, one minute in length; once per day between 11:30 and 11:45 am, Monday through Friday. According to your report, the Department of Agriculture supplies KRLA with a list of the best buys at the local wholesale produce market which we then broadcast to our listeners.

"Entertainment Compass" - begun October 17th 1959; one minute in length; broadcast between six and ten times a day Tuesday through Saturday. This feature presents a calendar of events: art shows, theatre and play openings, athletic events and special guest appearances in Los Angeles and area.

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"Public Greetings" - began December 15th 1959 and ended January 1st 1960; one minute in length; 48 times a day; taped messages from KRLA listeners wishing their friends, relatives, etc., Season's Greetings."

"KRLA Christmas Family" - begun December 19th 1959 and ended December 24th 1959; one minute announcement; broadcast 24 times a day. We broadcast the story of the unfortunate circumstances of an adopted family given to us by the Salvation Army. Apparently many KRLA listeners donated food, clothing, and usable gifts.

Instructions: Keep up the good work.

The availability of "Entertainment Compass" should be brought to the attention of every civic organization in the greater Los Angeles area. I hope they take advantage of KRLA's facilities.

Although this is a lengthy memo, now that I have committed to paper the problems of our public service, I realize that the job is not nearly as big as I feared.

Study the instructions. The only hard task ahead of you, Herb is "Town Hall". Yet, I honestly believe that once you get it rolling, it will practically "play itself".

At your earliest opportunity I want you to report your progress with these instructions. I want to know when you have scheduled each of the public service campaigns to start and I also want to know that they have started.

I realize I have not given you an easy chore, but I confidentially count on you to do this work for me. Many many thanks.

Best personal regards,

/s/ Don

* * *

ELEVEN-TEN BROADCASTING CORPORATION

TO: DON COOKE
FROM: HERB HEIMAN
DATE: JANUARY 8, 1960
SUBJECT: KRLA PROGRESS REPORT
PROGRESS ON FCC PROMISES:

Applicant's
Exhibit 19

Enclosed is a list of activities which were put into action immediately upon receiving your memo of January 4th. You will note the abundance of agriculture, farm and weather reports dedicated to agricultural interests in Southern California. Arrangements are already being made to have a Catholic Mass taped each Sunday and played back on KRLA. Today I am contacting the Pasadena Ministerial Service to line up a schedule representative of each of the religious groups regularly to be aired on KRLA in addition to the Catholic Mass. I am proceeding posthaste on all of your requests.

DISC-JOCKEY'S:

I am forwarding a dub of a disc-jockey whom Ed and I both like very much. I would like to have him work at KRLA as soon as possible. Your immediate comments on the advisability of hiring him would be most appreciated. With the approval of AFTRA we hired on a part-time emergency call basis a D-J called Bob Eubanks. He did a better than average job for bed-ridden Frosty Harris last evening. I am sure you will agree we must maintain a ready reserve to be called on in case of illness. He was paid minimum Union wages for hours worked.

STATION SOUND:

As indicated by the increase in Hooper ratings, which I am sure you have seen, there was more than just talk to my comments advising you that we are sounding better each week. Don, I am quite aware that we have a long, long way to go but we are on the right path.

ENGINEERING:

Although there is greater cooperation and enthusiasm among the engineers than there was even a month ago there are still two major problems that must be solved.

1. Sheer lack of engineering skills among members of the staff.
2. Equipment failure due to length of service and many years of poor service. These are real problems that will take many months to solve.

More next week, no further news on Elayne yet.

Fondest regards,

/s/ Herb

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PRESENTATION FOR KRLA SERIES
OUTLOOK [SEMINAR] TO
DR. SARAFIAN
PASADENA JUNIOR COLLEGE

Applicant's
Exhibit 19

[593]

January 11, 1960

Very shortly Radio KRLA will introduce to the Southland scene a bright new educational series titled "Outlook." [Seminar] Many of the recognized universities and colleges in the area will be participating in this weekly series. This twenty-eight minute thirty-second show will be aired each Sunday between the hours of 10:00 - 11:00 AM.

Each institution will be responsible for a series covering a four to eight week period. The content of the show will be based on one of the recognized scholastic endeavors. For example, your school may want to devote two or three weeks to Science; one week to the Arts and still another for Journalism. If all departments are able they may each be responsible for one half-hour show in the series.

The program should be taped using your facilities or if necessary KRLA may arrange for taping the show here or doing it live. The only requirements we have upon the schools is that the content must be aimed at slightly above high-school level and that no request for funds be made.

Serving an area from Santa Barbara nearly to San Diego, 50,000 Watt KRLA will broadcast your program to a possible 6 1/2 million people. It is our hope that you will take advantage of our facilities and cooperate with KRLA to make "Outlook" a milestone for enthusiastic radio listenership.

For complete information, please contact:

Mr. Herb Heiman
Radio KRLA
1401 South Oak Knoll
Pasadena, California
MUrray 1-6991

[594]

January 18, 1960

Very shortly Radio KRLA will introduce to the Southland scene a bright new educational series titled "Seminar." Many of the recognized universities and colleges in the area will be participating in this weekly series. This twenty-eight minute thirty second show will be aired each Sunday between the hours of 10:00 - 11:00 AM.

Each institution will be responsible for a series covering a four to eight week period. The content of the show will be based on one of the recognized scholastic endeavors. For example, your school may want to devote two or three weeks to Science; one week to the Arts and still another to Journalism. If all departments are able they may each be responsible for one half-hour show in the series.

The program should be taped using your facilities or if necessary KRLA may arrange for taping the show here or doing it live. The only requirement we have upon the schools is that the content must be aimed at slightly above high-school level and that no request for funds be made.

Serving an area from Santa Barbara nearly to San Diego, 50,000 Watt KRLA will broadcast your program to a possible 6 1/2 million people. It is our hope that you will take advantage of our facilities and cooperate with KRLA to make "Seminar" a milestone for enthusiastic radio listenership.

For complete information, please contact:

Mr. Herb Heiman
Radio KRLA
1401 South Oak Knoll
Pasadena, California
MUrray 1-6991

SEMINAR - COLLEGE DISCUSSION SERIES

Date	Lecturer	Subject	Institute
1/31 * * *	Dr. Bernard Fischer	Things Move Fast in Electronics	L.A. City College
2/14	Prof. Valene Smith	Anthropology	L.A. City College
2/21	" " "	World Geography	" " "
2/28 * * *	Secretarial Science	Business Trends	" " "
3/13 * * *			Loyola University
4/17	Dr. H. Horton	Existentialism As A Revolt	Glendale City College
4/24	Dr. Beaugard Chambless	The End Of The Bi-Polar Era	" " "
5/1	Pschy. Dept. Panel Dis.	Capital Punishment	" " "
5/8	Mr. Cy Janicki	Reading of Archibald McLeishes JB	" " "
* * *			

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OCCIDENTAL COLLEGE
in the City of Los Angeles

Applicant's Exhibit 19

February 8, 1960

Herb Heiman
Radio KRLA
1401 S. Oak Knoll
Pasadena, Calif.

Dear Mr. Heiman:

I regret to inform you that Occidental will not be able to participate in Seminar, your new educational series on KRLA.

Your January 18 proposal has been considered by the dean of the faculty and this office in reference to a particularly heavy schedule for the faculty; and it was regretfully decided that Occidental simply could not give its participation the time and attention necessary for responsible presentations.

/s/ PM
Peter Madison
Director, Office of Public Information

Applicant's Exhibit 19

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ELEVEN-TEN BROADCASTING CORPORATION

TO: Donald Cooke
FROM: Herb Heiman
SUBJECT: KRLA Progress Report
DATE: Feb. 29, 1960

Dear Don:

I received your letter of Feb. 26th and was sorry to hear you were not already on your way to California. In the meantime let me bring you up to date on our activities.

NEWSROOM:

Bill contacted a newsman, Norm Woodruff, who, for \$5.00 a day is sending beeper reports direct from the courthouse on the Finch-Tregoff trial. These are being used in the manner described in the enclosed memo. Bill has also done a fine job by making a contact in Sacramento. This newsman sends us by phone such important features as: Squaw Valley direct reports, proceedings leading up to and including the postponement of the Chessman execution, and the "Big Scoop," Governor Brown's press conference explaining his reasons for the postponement. We were at least the first to break the news and probably the only station to get this live report. The entire proceedings were covered in "Scope Unlimited." There has been some recurrent sloppy airwork on the part of the newsmen during the weekends. This has got to stop or we will sound like amateurs.

POLIO:

Enclosed you will find the copy of the current situation in regard to KRLA's Polio Clinic. I am sure this will be a great success for the March of Dimes, KRLA and the citizenry of Los Angeles. We are starting teasers Wednesday the 2nd.

DISC JOCKEYS:

Since this past Hooper was released enthusiasm, energy and spirit has been high and at last there is a chance to build some esprit de corps. I feel our choice of Sam Riddle was a good one. This past week he has proven he will become an excellent D.J. . . . he has imagination and a sincere interest in the station.

TOPIC YOUTH AND CALIFORNIA:

Both of these programs have been on the air but we will have problems keeping them going. As I told you on the phone we are working hand to mouth on Topic Youth . . . getting permission from individual highschools by all methods of coaxing. We are trying to build a strong enough case to resubmit to the City Schools Radio TV Committee. California has just not had enough attention, time, or manhours to make it into an exciting show.

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TOPIC YOUTH AND CALIFORNIA: CONTINUED

It sounds anything but good on the air and it has been all Bill could do just to have it recorded and aired. I would like to discuss these topics with you further when you return.

SUNDAY PROGRAMMING:

We seem to be running smoothly on the Sunday morning programs and the new D.J. recording schedule.

Anxious to see you soon.

/s/ Herb

P.S. Bill spoke to Mr. Bowles in Washington last week; he will be in Los Angeles this week and will contact Bill for their recording meeting. A letter will follow from Bill about the news department events of the past week.

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EXHIBIT 20ELEVEN-TEN BROADCASTING CORPORATION

TO: Don Cooke
FROM: Herb Heiman
DATE: April 6, 1960
SUBJECT: KRLA Progress Report

RATINGS:

At long last, Don, I finally saw the March breakdown on the Hooper . . . it shows a very promising future for KRLA. The Monday through Friday, noon to 6:00 PM schedule decrease is in keeping with Hooper's radical discrepant reports. It seems one area is usually off base, however, both from the ratings and from the huge amount of play all of us here on the beach, automobile and in shops we know our impressions are great and growing.

RELIGION AND PUBLIC SERVICE:

We definitely must do something about Sunday. This involves moving our block of discussion and religion to the period 6:00 AM to 10:00 AM if at all possible. I will approach Con Robinson this week to investigate the possibilities of a delayed broadcast or, instead, a broadcast of their evening service to free us from the 11:00 to 12:00 period for the summer. I propose the following schedule:

<u>Program</u>	<u>Time Period</u>
Sound of His Music	6:00 - 6:15
Rosary	6:15 - 6:30
Seminar	6:30 - 6:55
Religious News	6:55 - 7:00
Spirit of Today	7:00 - 7:30
Scope Unlimited	7:30 - 8:00
Lake Ave. Congregational Service (DB)	8:00 - 9:00
Mass	9:00 - 10:00
Perry Allen (etc.)	10:00 - 12:00

Would it be possible to put Scope Unlimited and either Seminar or Spirit of Today on hiatus for the Summer? Due to the nature of the program, Topic Youth as we know it must be off for the Summer.

CONTESTS:

For two reasons I have put KRLA Car Payment drawings back on the air. #1. Without any promotions for the past three weeks we have still received hundreds of entries. #2. Wonderful Weekend contest was delayed until we decide just what the F.C.C. has in mind on tradeouts, etc. Don Fry contends that we can announce a winner every other week. I agree. This past week the sales staff, Bob Laws and myself went over details of the "Know Your KRLA Men" contest. I personally like the idea very much. It must be refined and polished to take up very little time on the air and still be clear and rewarding. I'd like to get started on this one as soon as possible.

SUMMER VACATIONS:

As per our discussion on hiring a summer replacement for the three month period June through August, I have in mind Bob Eubanks. As you know, he did a fine job when the chips were down, when we had a sick D.J. I approached him to find out if he would be available; he will be, and for union minimum. The next time you are in town I'd like you to meet him and get your approval. This will be a very important position, particularly during baseball season and when the kids are out of school. The Newsmen's vacations must be split during the periods before and after the Democratic National Convention I will discuss the Engineers Vacation's with Jack Reeder.

I should have an aircheck on KABL San Francisco this week. There's an aircheck of a real fine sounding station on the way to you, it's from KR. . something or other in Los Angeles . . Best regards from Elayne, Herb.

EXHIBIT 23KRLA AGRICULTURAL PROGRAMMINGAGRICULTURE IN NEWS

Two newscasts a day have the majority of their content devoted to farm news. They are broadcast at 5:55 AM and 1:55 PM and are 4 minutes, 30 seconds in length. This policy was initiated approximately in October, 1959 with the 1:55 PM report given at 11:55 AM. The change to 1:55 PM took place the week of January 18, 1960. A complete agricultural weather forecast is included in each of these newscasts.

* * * * *

Thirty seconds of agricultural news is included in every newscast aired on KRLA. This policy was not strictly adhered to

prior to January 8, 1960, however, it has been fulfilled from that date on. The content includes pertinent local and national news developments that would interest local farmers and livestock breeders in the Southland. Stock, grain and poultry exchange prices are quoted daily.

[605]

KRLA FARM ROUNDUP

The KRLA Farm Roundup is a fifty minute program aired each Monday morning from 5:00 to 5:50 AM. It made its first appearance on Monday, January 11, 1960. The Farm Roundup is a show composed of live and transcribed agricultural information and recorded music. The live portions include weather conditions and frost warnings; the latter specifically for each of the citrus crops. Complete weather forecasts for each of the agricultural districts are given by the announcer on duty. He also gives a weekend stock exchange roundup and pertinent local and national farm news.

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BEST BUY OF THE DAY

Once per day, Monday through Friday, between 11:30 and 11:45 AM the show the Best Buy of The Day is aired. This sixty second presentation began October 15, 1959. Its purpose is to help Southland shoppers find what farm products arrive in Los Angeles in the greatest quantity and quality so they may better prepare their shopping list. This information is supplied by Mr. Chevland of the Federal State Market News Service.

As of August 17, 1960 Best Buy Of The Day is aired twice daily at 10:30 and 11:45 AM.

*Based on what information
— from what source*

[607]

FROSTY'S FROST WARNING

Frosty's Frost Warning is a two minute weather show aired three times nightly Monday through Saturday. The show was first heard on KRLA January 2, 1960 and each evening thereafter at 8:45, 9:45 and 10:45 PM. It is a complete weather report and forecast for each of the agricultural districts in the Southland. During winter months it will include specific frost information on each of the citrus crops. During the Summer months the show will bear a different title but still be a complete weather survey. The report was discontinued for the summer and the last date of airing was March 3, 1960 at 10:45 PM.

Smog Index reports are furnished by the Air Pollution Control District and readings are aired throughout the day.

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AGRICULTURAL WEATHER

Agricultural Weather is a complete agricultural weather survey presented daily at 6:45 and 7:45 AM. It was initiated on January 2, 1960. This one minute weather picture is directed explicitly to farmers in each of the major farm areas in the Southland.

[609]

KRLA DISCUSSION PROGRAMSCOPE UNLIMITED

Scope Unlimited is a half hour taped discussion show presented by the Public Affairs Department and aired each Sunday morning from 10:00 to 10:30 AM. Scope Unlimited made its first appearance on KRLA on Sunday January 17, 1960.

The purpose of Scope Unlimited is to explore through discussion with experts in the field that is topic for exploration, the events and issues which have a direct influence on all of us.

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KRLA EDUCATIONAL PROGRAMMINGTOPIC YOUTH

Topic Youth is a presentation of the KRLA Public Affairs Department aired from 9:00 to 9:30 PM Monday through Friday. It was initiated on KRLA during the first week of February 1960.

Each of the local highschools was given the opportunity to present it's history, background, scholastic and athletic achievements, student body officers and pertinent information regarding it's plans for the future. For the duration of the summer Topic Youth was aired twice a week and was devoted to presenting items of interest in entertainment, culture and athletics. The show will be resumed on a five day a week basis beginning September 12th the first day of school.

[611]

SEMINAR

Seminar is a 25 minute educational presentation heard each Sunday from 10:30 to 10:55 AM. It was initiated on KRLA January 31, 1960. Seminar is a college lecture series prepared by local universities in blocks of six to ten shows aired on successive Sundays.

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KRLA EDUCATIONAL - TALK PROGRAMMINGCALIFORNIA

California was aired for five minutes nightly from 11:05 to 11:10 PM Monday through Friday beginning February 1, 1960. On February 8, 1960 California began having as its guest educators prominent men in local industry. The series was extended to ten minutes and is aired presently from 11:00 to 11:10 PM nightly.

The primary purpose of the program is to "inform" and KRLA's Public Affairs Department seeks the best source of information on a variety of subjects directly related to scientific and industrial activities in the stations service area.

[613]

PAST PARTICIPANTS IN SCOPE UNLIMITED AND CALIFORNIA

<u>Participant</u>	<u>Program</u>
Dr. Igor Annsoff, Lockheed Aircraft	Scope Unlimited and California
Gene Burke, L.A. Passport Office	Scope Unlimited & California
Col. James McCampbell, U.S. Air Force Minuteman Supply & Transportation	Scope Unlimited & California
Williams Croft Jennings, Board of Governors, Red Cross	Scope Unlimited & California
F.A. Jendrick, Mobile Systems Mgr. Minuteman Doing Airplane Co.	Scope Unlimited & California
Mjr. Gen. Kenneth B. Hobson, USAF Commander Ogdon Air Material Area - Minuteman	Scope Unlimited & California
Mjr. Gen. E.B. Broadhurst, USAF Chief of Staff Strategic Air Command	Scope Unlimited & California
Col. Samuel C. Phillips, Minuteman Prog. Dir.	Scope Unlimited & California
Frank Gard Jameson - Nat'l Pres. Navy League US	Scope Unlimited & California
Karl Holton, Chief Probation Officer LA County	Scope Unlimited & California
Admiral Jack P. Monroe, Commander of the Pacific Missile Range, Point Mugu	Scope Unlimited & California
Governor Brown, Capitol Punishment Hearing	Scope Unlimited & California
Dr. Louise Seyler, Deputy Supt. LA Board of Education of LA City School District	California
Mr. Howard Seifert, Pres. American Rocket Soc. Professor of Aeronautical Engr. Stanford U.	Scope Unlimited & California
Mr. R.G. Hoffman, Chairman Structural Design AFS Committee	Scope Unlimited & California

Kurt Stehling, Nat'l Aeronautics & Space Administration, Washington	Scope Unlimited & California
Benjamin Hite, Registrar of Voters LA County	Scope Unlimited & California
Max Hunter, Eugene Kennecci, Robert Trapp Douglas Aircraft Company	Scope Unlimited & California
Dr. Manfred Eiman, Chief, Research Analysis Section, Cal-Tech Jet Propulsion Laboratory	California
Mr. Gene Gibberson, Chief, Guidance & Control Division, Cal Tech.	California
Dr. A. Hibbs, Jet Propulsion Laboratory, Pasa.	California

[614]

KRLA RELIGIOUS PROGRAMMINGROSARY HOUR

The Rosary Hour is a fifteen minute transcribed presentation of the Catholic faith. It was initiated on KRLA January 31, 1960 and is being aired from 8:00 AM to 8:15 AM each Sunday morning.

[615]

THOUGHT FOR THE DAY

Thought For The Day is a 2 minute, 30 second presentation aired Monday through Saturday from 6:15 to 6:17:30 AM. Initiated originally as KRLA's Word For The Day during the fall of 1959 at 6:28 AM this presentation was changed to Unity's Thought For The Day on Wednesday, January 20.

[616]

RELIGIOUS NEWS REPORTER

The Religious News Reporter is a five minute live presentation aired each Sunday from 8:15 AM to 8:20 AM. It began the 17th of January 1960. This summary of religious news from around the world is presented by Reverend J. Rex Smith of the Religious News Service on behalf of the National Council of Christians and Jews.

[617]

THE SOUND OF HIS MUSIC

This is a ten minute religious music presentation aired Monday through Saturday at 5:50 AM and on Sundays from 8:20 AM to 8:30 AM. This feature began on KRLA December 8, 1959. The music is composed of spiritual classics.

[618]

SPIRIT OF TODAY

The Spirit of Today is a thirty minute presentation aired on KRLA from 8:30 AM to 9:00 AM each Sunday and a re-run from 11:30 PM to 12:00 Midnight Sunday night. The three major religions are participating in an equitable rotating basis. The ratio is three to two to one, Protestant, Catholic, Jewish. The cooperating organizations are the Federation of Churches of Southern California (Dr. Clifton Moore), Los Angeles College of Jewish Studies (Rabbi Kleinman) and with the blessings of the Catholic Archdiocese there are participating Catholic institutions.

[619]

SERVICESCATHOLIC HIGH MASS

Catholic High Mass was initiated on KRLA January 31, 1960. It is a 55 minute presentation, from 9:00 to 9:55 AM Sundays live from the Immaculate Conception Church, 1433 W. 9th St., Los Angeles. This Church service is being aired exclusively by KRLA.

MORNING WORSHIP SERVICE

Morning Worship Service is a one hour live presentation originating from the Lake Avenue Congregational Church. It originated on January 31, 1960 and is aired each Sunday morning from 11:00 to 12:00 Noon exclusively on KRLA.

EXHIBIT 24

MODERN RADIO LOS ANGELES

K R L A

August 31, 1960

The statement below is true to the best of my knowledge.

On the weekend of October 30 and November 1st these people worked on gathering material for the FCC (logs of Oct. 18, etc.) Ed Schulz, Mrs. Schulz, Janice Crosby, Elayne and Herb Heiman. On the night of Sunday it was called to my attention by Ed that we had a zero percent in religion, and that he had asked me to place in the studio a few weeks prior to that date, a book containing a message "thought for the day."

I could not find the book or original note left in the studio. I showed Ed the notes carbon and it was decided by him to attempt to reflect that we had run a short religious message during the week of October 18th.

[621]

Although the "word (thought) for the day" was placed in the log hurriedly - an accompanying note was not sent to clarify the intent of placing the addition on the log. This was simply overlooked because of the extreme haste brought on by the November 4th deadline.

There was no intent to perpetrate fraud or commit an act illegally to my knowledge.

/s/ Herb Heiman

It was the consensus of those at the meeting that the Thought for the day must have been aired, however, I did not actually hear it on the air.

/s/ Herb Heiman

[JURAT - Dated August 31, 1960]

APPELLANTS EX. 27 [Excerpts]

MONDAY CLUES:	[643]	AMOUNT
800 AM	A Day For Work, A Day For Play Combine The Two & Win Today, Not In A Park, Tho' Thats A Start, I Think You're Fast On Your Way.	\$20,000.00
830 AM	A Fish In The Water, So Make Your Wish, If Contests Are Your Favorite Dish, Go Near The Sea To Find The Key Remember The "Key Word" Is Fish.	19,000.00
900 AM	A Popular Place To Spend The Day, The Ocean Is Not Very Far Away, Point Your Nose Toward Nome, Don't Let Your Eyes Roam, And Think Of the "Restful" Day.	18,000.00
930 AM	Three Little Fishes That I Once Knew, Provides A Very Enlightening Clue, Count With Care, Look Everywhere, And You're very Near Getting Your Due.	17,000.00
1000 AM	A Family Out For A Day Of Fun Could Figure Where The Search Begun, A Playground Is Near The Money Is Dear We Hope Today, The Dollars Are Won.	16,000.00
1030 AM	Not In A Restuarant, Bar Or Motel, But Near Three Fishes, The Clues Fortell, Threes Figure In The Fun Begins Does This Clue Ring The Bell?	15,000.00
1100 AM	A Road To The Left, The Right, The Rear, The Key Is Hidden, Do Not Fear, The Sign Of The Fish Fullfills Your Wish The Clues Should Become More Clear	14,000.00
1130 AM	Four Lanes Of Traffic, East & West, Right Now We Say, West is Best. A Ride And A Walk, Plenty Of Talk This Is No Time To Sit And Rest.	13,000.00

MONDAY CLUES (Cont'd):

AMOUNT

1200 N	By Now You Know The Key Is Hidden, To Tell The Place, We're All Forbidden, But In Green Hills, Is A Key For The Bills, You Must Pace, And We're Not Kiddin'.	12,000.00
1230 PM	Take Ye A Shovel, A Spade Or Pick, You'll Surely Need It, This Contest To Lick, Go Distant West, Near Ocean Is Best, But Too Close And You'll Surely Kick.	11,000.00
100 PM	The Hills Are Rolling, Grassy And Green, By Now Your Wits Are Surely Keen, "Trees" Is A Clue, And Just What To Do, Is Left Completely Up To You.	10,000.00
130 PM	One Clue Alone May Have No Meaning, But All Together, They'll Have You Leaning, To The Specific Spot, Very Near A Lot, Of Family Fun Near The Ocean Gleaming.	9,000.00

[644]

200 PM	The Fish Are Playing, Very Near, To The Hidden Key, And Money Dear, To The North A Glance, Is Not By Chance, An Important Lead To the Key So Clear.	8,000.00
230 PM	You're On The Right Track, By Now You Know, That The Key Is Near, And Soon Will Show, Perhaps Underground, With Nothing Around, When Its Found, The Gold Will Glow.	7,000.00
300 PM	A Man With A Will And A Shovel, Would Look Below Ground Level, Not Very Far, Would Be His Star, And The Money Would Not Dishevel.	6,000.00

MONDAY CLUES (Cont'd):

AMOUNT

330 PM	From The Sign Of Three Fishes, Your Back Southeast, Seven Trees Stand, Concerned Not The Least, Three From The Right, Not In Plain Sight, And The Money Is Yours If You Please.	5,000.00
400 PM	Fourteen Paces In The Proper Direction, Will Lead To Eventual Detection, Of A Golden Key For All To See, And Money Enough For Varied Selections.	4,000.00
430 PM	If You Don't Know Now, We Hardly Know How To Help You Find The Key. Don't Look East -- West Is Best, And the Key You Will Soon Surely See.	3,000.00
500 PM	Seven Trees, All Together, Standing Alone In All The Weather, Fourteen Paces, Third From The Right, And The Money Is Yours Forever.	2,000.00

BROADCAST BUREAU EXHIBIT 1

All of a sudden out of a night
Comes an idea but not in sight
An open transom, a man quite handsome
Says "Say, have you got a light"

Up in the skies the airplanes zoom
Leaving a trail . . . some kind of fume
They rarely go over a small patch of clover
But the key just might be in bloom

On the slope of the hill they play
The children, day after day
If they knew the wind blew
They would turn first to you
Then you would not be far far away

All over Los Angeles the keys are found
To fairly abound, But a look toward Norway
Could just be your way
To fortune and fame all around

As planes fly in and others fly out
Don't spend your hours in a mental bout
Get up from the chair and let down your hair
Then the key you'll know all about

Up in the air away we go
Think of the money the family will blow
Buy a new house, get out of debt
Could the key be down below?

Be happy, be gay
Today's the day
For fame and fortune will come your way
You cannot ride, nor glide, nor walk
But for the key you'll gladly pay

There was a guy from Montebello
A handsome man was this young fellow
He had a key but couldn't it be
That his key was colored yellow?

Fifty thousand watts is a whole lot of power
To come from a red and white tower
But don't look here and have no fear
For gifts on yours to shower.

If your mind is searching for one little key
Then let's get together and make it we
For bear this in mind, there is two of a kind
And we can do better than thee

[664]

Deep in the night when the moon is in sight
And the still of the air might give some fright
Your best thought will come for this 50 thousand sum
From secrets that are inherent in the night.

If you are a man who is mighty
And your love is flighty
Then the two of you and the color blue
Might find the air a might bitey.

There was a man from the south
With 21 fillings in his mouth
He took count of these, the number did please
And he is searched for a larger amount

The temperature might be a key
To the place this fortune may be
So don't fluff it off or look in a loft
But consider the lowest degree

The ocean's a nice place to be
But not way out on the sea
The water around or in this town
May be the key to the key

Poets have license to lie
That is no reason to cry
But we've got to rhyme most of the time
And you listen and try

[665]

A man with a wee bit of leeway
Might cautiously avoid the freeway
But here intuition and sturdy ambition
Might help to locate the key way

If you think you have innerperception
You'll know this is not deception
A turn to the right but not at the light
Might lead to the key's detection

In your own close circle of friends
Really good concentration begins
A man on the left, completely in step
Might walk right over the clue

From out of the west a blot of blue
The meaning will suddenly come to you
When driving your car the water's not far
The clue is oh so true

For 40 thousand think of a tree
This is a clue to the golden key
The money is waiting, don't be hesitating
Following the clues to the smallest degree

Roses are red in hue
Violets are blue
But the hills we were thinking of are green

[666]

You're going west on a four-lane road
The 20 thousand is a mighty big load
Aside to the right is a profitable sight
Ease up, let your pace be slowed.

[Aug. 31, 1961 - To the best of my recollection, these are some of the
limericks witten and used on the KRLA "Find the Golden Key" Contest.

/s/ Wm. J. Wheatley]

[712]

BROADCAST BUREAU EXHIBIT 3

NO ORAL INSTRUCTIONS OFFICE MEMO DATE October 2nd 1959
To Herb Heiman From D.R. Cooke Copy to Ed Schulz
SUBJECT:

When I made up the program schedule which was submitted to the FCC and approved by them, I included a farm report on each newscast. I regret now that I did so. However, Pierson, Ball and Dowd urged that KRLA increase its amount of agricultural programming. Thus, the reason for the inclusion of the farm report.

Naturally, we don't want the usual "hay seed" type of report inserted in our newscasts. However, surely there are means of getting around the strictly rural or "hay seed" type of information.

For instance, could we broadcast the prices of:

Avocadoes
Oranges
Lemons

This information can be obtained from the Sunkist Fruit Exchange in Los Angeles. I believe they issue a daily citrus report.

You can also obtain, locally

Wheat prices
Corn prices
Barley prices

as quoted on the Chicago Grain Market.

Available also, I am given to understand, are the prices on cattle, as quoted on the Oklahoma and Los Angeles Cattle Markets.

Ed Schulz has an idea that the farm market reports can be incorporated in our schedule in the form of "tips to housewives". I don't see how this would help KRLA conform to its proposed broadcast schedule. I think that a 30 second farm market report on certain specific newscasts (certainly not on the 24 newscasts a day) would fill the bill.

Herb, please give your serious attention to this. I am not anxious to run afoul of the FCC.

By now, you have undoubtedly received a copy of the program schedule which we submitted to the FCC. You will note that KRLA intends to:

- 1) Set up a series of religious programs
and
- 2) Set up a series of public service talks
in the late evening

Treating first with No. 2, perhaps the use of a public service announcement in a quarter hour, say from 10:30 - 10:45 P M nightly, will satisfy the FCC.

[713]

Ed Schulz tells me that a public service announcement in this period without any commercial announcements being included in the period designates the entire 15 minutes as public service. If this is so, are both of you fellows satisfied that we should not have to put a 15 minute talk in? I understand that the Smog Research Division of UCLA is prepared to give us material for one minute spot announcements which could be used in such a period and which would result in the 15 minute period being classified as public service. As I recall it, Dr Hagen Smith is the professor or researcher in charge of the smog program and Mr Jim Miller is the public relations counsellor for that part of the university.

As to the series of religious programs, nothing would please me more than to remove the necessity of broadcasting a round table of churches in the 11:00 A M to 12:00 noon period Sundays. If both of you fellows feel that we should have a religious program on the air and; whether we want a religious program on the air or not, that we must broadcast one in order to conform with our promise to the FCC, why not put it on between 6:00 and 7:00 A M Sunday mornings? Would this pass muster? You will also note that KRLA has undertaken to broadcast a 30 second or 60 second message of religious good cheer each morning at 5:59 A M. My thought originally was to

invite each clergyman in the Los Angeles area to prepare a 30 or 45 second inspirational message. If we had a back log of 50 - 100 inspirational messages, they would not wear out their welcome too soon.

I am anxious to get your reaction to this memo.

Yours very truly

/s/ Don

[714]

BROADCAST BUREAU EXHIBIT 4

DONALD COOKE, INC.

Inter-Office Correspondence

To: Herb Heiman
Pasadena California

From: Don Cooke
New York

April 12 1960

Dear Herb:

It was very good to talk with you on the phone today. There isn't any doubt that KRLA is the most talked-about station and will be the most listened-to station in Los Angeles.

Just to confirm my feelings about the Sunday religious and public service programming, before doing anything, the following points should be answered in the affirmative:

1. Tommy Dowd should be consulted and should approve the move -

2. No move should be made until about a month after the FCC has approved KRLA's request for its license renewal -

At that time, undoubtedly, we will be able to drop some of the present programming but we will only do so with the full approval of Pierson Ball & Dowd, of course.

Looking forward to hearing the tape on KABL. Thanks.

Best regards

/s/ Don

[715]

BROADCAST BUREAU EXHIBIT 5

Herb Heiman

Los Angeles California

January 11 1960

Don Cooke

New York

Dear Herb:

Be sure to send me presentations or airchecks, for prospective clients, on all promotion mentioned in your memo of December 31st.

As mentioned to you on the telephone, obtain, in every instance, letters from all sources that will be of benefit to KRLA in the matter of public service, religion, education, etc.

Kindest personal regards,

[716]

BROADCAST BUREAU EXHIBIT 6

Volume I, Issue #2

October 15, 1959

"KRLA RADIO SALUTE TO THE DONALD COOKE REPRESENTATIVES"

Dear Men:

Here's the second issue of the KRLA "SALUTE" to the Donald Cooke organization. The FIRST and MOST IMPORTANT SALUTE this month goes to the KRLA Program Staff for the great showing in the first HOOPER REPORT! Get this:

RATINGS:

12 Noon - 6 PM, Monday - Friday FIFTH IN THE MARKET!

Over-all Rating Points SIXTH IN THE MARKET!

Men, this is the biggest SINGLE GAIN in Hooper in a 30-day period ever made by a Los Angeles radio station! We passed 32 other radio stations in Greater Los Angeles in just 30 days time! Even more interesting is the fact that these fine ratings were made the weeks of September 14th and 21st, at a time when the National League pennant race was at a fever pitch. In addition, KRLA stopped

all giveaway promotions for the two week rating period! By now, you have received reprints of the September Los Angeles Hooper Rating.

PROGRAMMING: We're finally set now on the finest line-up of talent ever to hit Los Angeles. The KRLA personalities are doing a tremendous job in garnering listeners and rating points. Shortly you will receive complete KRLA Program Fact Sheets on each one of these personalities. Meanwhile, here is the KRLA "MILLION-DOLLAR" Line-Up:

PERRY ALLEN (6 AM - 9 AM) Unique is the word for Perry Allen! He was Buffalo's HIGHEST RATED morning man before coming to LA. Right now he is causing more talk and comment inside the trade here than any other personality. Perry Allen will in short order become the top-rated early morning man in Los Angeles radio! And believe it or not.....he's really funny! Any man that can make me laugh early in the A.M. has got to be good.....Perry Allen is not merely good...he is SENSATIONAL!

ROY ELWELL (9 AM to 12 Noon) The smoothest, most professional sounding dee jay in town. A top-rated pro on KQV in Pittsburg, Roy Elwell brought himself and his beautiful wife (She looks like Brigitte Bardot) to Los Angeles, and right now is seducing every housewife in the Southland to tune into KRLA Radio. This man is a natural for the mid-morning spot and just watch the ratings rise here in the next Hooper.

[717]

BOB COLE (12 Noon - 3 PM) Bob Cole is big, red-haired, and likes to play music and lots of it. He moves right through the KRLA Top Fifty at a lively (not hectic) pace that keeps all the listeners in a toe-tapping mood. A pro with 15 years experience in the business, Bob Cole comes to KRLA from KSO in Des Moines where he was program director. He knows pop music, loves to play it, and

his enthusiasm is contagious. A real happy show for happy listeners and happy sponsors.

JIMMY O'NEILL (3 PM - 6 PM) This young veteran is just 19 years old. And is probably the youngest professional dee jay in Los Angeles. We predict great things for young Jimmy. He projects his tremendous enthusiasm right through to the listeners, and does a great sales job on the air. Jimmy has tremendous teen-age appeal, yet his warm sincerity gives him a natural appeal for all ages. Jimmy's been top-rated in his last two jobs. 48 per cent Hooper at WKY in Oklahoma City, and 27 per cent in Pittsburg at WCAE. So you know what to expect here at KRLA.

FROSTY HARRIS (9 PM - 12 Midnight) A native of Los Angeles, and a graduate of UCLA, Frosty Harris is a sharp young air personality, who learned the radio game on some of the top mid-western independent stations. On the nine to midnight shift, "Frosty....Man.....Frosty" has become a trademark for a bright and happy sound on KRLA....a sound that is garnering rating points for your clients right now.

FRANK POLLACK (12 Midnight - 6 AM) Pollack's "Frolics" is the ONE late night show in Los Angeles radio that keeps the listeners AWAKE! Frank Pollack is a pro in both the radio and music fields. A former sax sideman with the Woody Herman Band, Frank Pollack keeps KRLA's Modern Radio booming into the sets of nite-owl stay-ups and the 86,000 cars that hourly cross the Los Angeles freeway system between midnight and dawn.

THE MYSTERY DEE JAY Shortly you will be hearing about KRLA's latest addition to the all-star personality line-up. The man who will fill that all-important 6 PM - 9 PM time slot. Full details as soon as he arrives.

SCHEDULING: Here is an important fact.....KRLA Radio is the ONLY LOS ANGELES STATION to block program its personalities in the same time slot SEVEN DAYS A WEEK! Yep...that's right.... only on KRLA can you hear each and every personality at his regular

time ON SUNDAY TOO! This unique programming schedule has been arranged at GREAT EXPENSE to the management. So to help us...we ask that on all orders you insure that DUPLICATE TRANSCRIPTIONS are sent to the station to cover the taped week end shows. REMEMBER a duplicate set of ET's on every order or change in continuity.

[718]

SUNDAY RADIO: You might ask yourself why have we gone to the trouble of duplicating our Monday through Saturday schedule on Sunday...something very few stations do. Well, in Los Angeles.... SUNDAY IS A BIG RADIO DAY. Yes, there is a city on wheels the size of Detroit every Sunday from 9 AM to 11 PM in metropolitan Los Angeles. KRLA's listeners are on the go everywhere, in their cars, at the beach, with their portables, fishing in the lakes or ocean. Remind your clients too....when they call for a Monday through Saturday schedule to ADD MORE SPOTS to cover that all important SUNDAY RADIO AUDIENCE IN L.A! And ONLY KRLA can offer complete personality programming all day Sunday uninterrupted by commercial religion.

PERSONNEL: It's important that you all know who you are dealing with here at KRLA. So here's a breakdown of your KRLA contacts.

SALES: In addition to myself...Mary Stephenson, KRLA's Sales Secretary. Check with Mary or myself on all requests for avails, rates, schedules, etc.

OPERATION: We are pleased to announce the appointment of Herb Heiman, as Production Director of KRLA Radio. He comes to us from KGV in Pittsburg where he headed up all KGV production. Herb is in direct charge of all programming operations at Pasadena, including traffic, music, continuity, etc. Be sure and coordinate any special copy instructions you may have with Herb Heiman from now on. Working under Herb's direction are

Janice Crosby in traffic, and Shane Wilson in continuity.

Both gals are ready, willing and able to help you on any problems that arise.

SALES PROMOTION AIDS: By now, all of you should have received the following material:

1. Coverage maps
2. Rate cards
3. SRDS reprints
4. KRLA premiere issue of MAC
5. KRLA press releases
6. September Hooper Report
7. 15 min. Tape Audition of each dee jay
8. Tapes of all Featurettes and News

Shortly you will receive the all-important program and personality fact sheets, plus special KRLA Radio presentation folders to hold all of the above material when you present it to your clients. Please let us know if you need additional stocks of any of this material and we will ship it off to you.

[719]

MAIL PULL: KRLA's mail pull is growing and growing. Station mail pull on all our promotions and contests, as well as our record offers has exceeded our best expectations. We are in the process of charting the areas and towns from which we are receiving mail, and will make up a proof of mail-pull map as an additional sales aid.

HAPPY SPONSORS ON KRLA: We're proud and happy to welcome these fine national and local accounts as CHARTER ADVERTISERS on KRLA Radio.

Ace Vacuum
Arthur Murray
Bubble Up
California City
Colgate-Palmolive
Courtesy Chevrolet
Crawfords Markets
Dr. Finley

Hance Chevrolet
OK Rubber Welders
Oscar Maples Ford
Rainier Ale
Republic Van and Storage
Santa Fe Wine
Schlitz
Seaboard Finance

Dahlby Desoto
El Producto Cigars
Epoch Chevrolet
Faultless Starch
Ford Dealers
Harmony Homes
Holiday Forest
Kinney Shoes
LFD Chevrolet
Lydia Pinkham
McIntosh Apples
Masterbilt Fence
Mortgage Refinance
Bill Murphy Buick

Self-Realization
Stanley Chevrolet
Swift
Toyopet
Union Mortgage
Western Harness Racing
White Front Stores
White King
Worthington Dodge

Men....that's all for now. You've got the finest radio property on the West Coast to sell. The sales pitch is a beauty.... fifty thousand watts, 95% coverage of Southern California, prime avails, low rates, and NOW.....TERRIFIC RATINGS.

KRLA IS IN ORBIT!

Warmest regards,

Ed Schulz
General Manager
ELEVEN-TEN BROADCASTING
CORPORATION

[740]

[Received March 13, 1961 - F.C.C.]

PROPOSED FINDINGS OF FACT AND CONCLUSIONS

ELEVEN TEN BROADCASTING CORPORATION

[752]

The Misrepresentation Issue

- 28 Issue One of the Commission's Hearing Order reads as follows:
"1. To determine whether, in light of its operations since it acquired Station KRLA, the licensee's program proposals contained in its application for Commission consent to assignment of the license of KRLA (then KXLA) (BAPL-171) were made in good faith."
- 29 The application for the assignment of license of KXLA contained a program schedule and a narrative statement of the assignee's programming plans (T. 761-762). It was prepared on November 20, 1958, at a meeting between Donald Cooke, Jack Cooke, and Ralph Walker, an attorney in the law firm of PIERSON, BALL & DOWD (T. 762).
- 30 In the preparation of this program schedule and plans, Donald Cooke proposed that the station should gain local acceptance through public service programming. He also specifically provided that the station not accept sponsored religious programs (T. 767-768). This policy was based on Donald Cooke's personal belief that only by rejecting all commercial religion could he keep undesirable groups from using the station's facilities. To this end he proposed a rotation basis for religious groups (T. 906). The program schedule proposed by the assignee generally followed a music and news format or a so-called "Top Forty" format (T. 251). The proposed schedule was interspersed with sports, news, farm reports, a nightly educational program ("Town Hall"), a program featuring announcements of community affairs ("Town Crier"), religious broadcasting and the church services rotated among the several denominations (App. Ex. 11

BAPL-171 Official Notice at T. 404). At the hearing, Donald Cooke testified under oath that he intended to carry out the public service programming proposed in that schedule (T. 727).

31 When Eleven Ten took over KXLA on May 1, 1959, the station was primarily a western music station with much its income from commercial religion and remotes from various night clubs in the area (T. 240). The initial effort of the new management was devoted primarily to the selection of a competent staff and creation of a physical setup which would effectuate the proposed program format. The station had no trained newsmen (T. 200), was plagued by a shortage of equipment (T. 196), and a cumbersome studio layout (T. 946). At the time Eleven Ten acquired KXLA, the station had a construction permit to increase its power to 50 kw.^{6/} When the new licensee took over, it anticipated that approval of program tests with the new transmitter would be forthcoming in early August, 1959; and the introduction of the proposed new programming was tied in to coincide with the beginning of the 50 kw operation (App. Ex. 17 p. 5, T. 251). As time went on and the station was not ready to operate with the increased power, the introduction of the new format was accordingly postponed until a new target date, September 1, 1959 (T. 259, 380).

32 Until such a time as new personnel were selected, Loyal King, the principal stockholder, president and general manager of KXLA while it was operated by Pacific Coast Broadcasting Corporation, was

^{6/} See pars 114, 129 infra for further discussion of the background of this application and other problems created by its pendency.

asked to remain in charge of the station (T. 236-237). The programming format of the station was to remain essentially the same--western--until the details, personnel and facilities for the new operation were completed (App. Ex. 17 pp. 1-6, T. 252).

33 Within a week after Eleven Ten acquired the station, Donald Cooke set out to hire a new program director (App. Ex. 8, p. 1). He wrote to five most qualified men in the field offering them positions with the station (T. 673). One of the program directors whom he contacted was Bill Wheatley, program director of WKY, Oklahoma City, Oklahoma. Donald Cooke had personal knowledge of the WKY operation and its program service (T. 679).

34 The operation of WKY centered around popular music programming with 5-minute newscasts on the hour, weather capsules, time and temperature information consistent with music and popular programming. However, on week ends the "Top Forty" image was modified when WKY carried the broadcast of the Oklahoma City Symphony Orchestra as well as live church services from different churches on a round-robin basis. In addition, the station carried specialized programming in capsule form for the Oklahoma Medical Research Foundation, talk programs in capsule form, and daily agricultural information (T. 365-367).

35 Donald Cooke met with Wheatley, hired him; and Wheatley testified that he understood that Donald Cooke had in mind for Pasadena the same kind of operation which Wheatley had conducted in Oklahoma City (T. 301). In fact, it was Wheatley's intention to so program the station (T. 369, 370). Wheatley saw nothing inconsistent

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between a "Top Forty" operation and talk and cultural programming as proposed by Eleven Ten in the assignment application (T. 367).

36 Wheatley took over his functions as program director of KRLA on July 1, 1959 (T. 302). Prior to that time Donald Cooke sent him the program schedule which was submitted to the FCC with the transfer application as well as the preamble to that schedule. Donald Cooke pointed out that while there might be some minor changes from the schedule submitted to the Commission the actual program service would

be "similar" and "closely related" to that proposal (App. Ex. 18 pp. 12-13). The same instructions and program schedule were also issued to the new manager (App. Ex. 18 pp. 12-13).

- 37 Within a week after his arrival, Wheatley canceled commercial religious programs and programs emanating from night clubs. The letters of cancellation of the commercial religious programs stated that the cancellation was "in accordance with KXLA's application with the Federal Communications Commission in Washington, D.C." (App. Ex. 9 pp. 1, 3).^{7/} Wheatley also advised the churches that the station would in the future institute a series of round-robin religious programs without charge (ibid). Donald Cooke had advised Loyal King at the time of the assignment that pursuant to the announced policy "We would not accept any renewals for religious programs" (App. Ex. 17 p. 2, letter dated May 19, 1959).

^{7/} This action was pursuant to authority which Donald Cooke gave Wheatley (T. 240). The cancellation of commercial religious programs cost the station \$16,000 by August, 1959, and as of October, 1959, the station had refused \$115,000 in commercial religious business even though it was suffering heavy losses (T. 906, 1191).

- 38 Wheatley's primary responsibility between July 1 and September 1 was to physically produce the new program schedule and to build the staff necessary to implement it (T. 237). The task of creating the new program and staff was compounded by the inherent problems of keeping the existing program service on the air (T. 373-374). Wheatley auditioned 100 to 150 new announcers (T. 238); supervised, evaluated and eventually terminated the old staff announcers (T. 240); created a new music library; organized a continuity and production department (T. 255). The new program schedule was readied for a dry-run rehearsal on August 20, 1959, (seven weeks after Wheatley reported) (T. 273-275).

39 As a result of this rehearsal, the decisions made by Wheatley were found unsatisfactory and a crash program was instituted to find new announcers, discharge most of the announcers hired by Wheatley and create a new program service before September 1 (T. 273-275).

40 On September 2, 1959, Eleven Ten filed an application for renewal of license. The renewal application was executed by Donald Cooke on August 14 in Pasadena (T. 260-261). The programming portion of the renewal application, including the percentage analysis, was prepared by Mr. Wheatley (T. 260-261). The renewal application contained the following language:

41 "KRLA will not schedule spot announcements in excess of 60 seconds in length, nor will any 15-minute segment have more than five spot announcements scheduled on a participating basis. On all type sales, the NAB code will be adhered to throughout the broadcast day." (T. 262).

42 The original application for assignment of license contained the following representation:

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43 "The general practice and policy will be to limit spot announcements to 1 minute each, with no more than three minutes of commercial spot announcements in a 14-1/2 minute period. Reasonable departures from this may be permitted in certain types of programs such as shopping and marketing guides and personality shows, providing that the commercial continuity is in good taste and in keeping with the type of program being presented." (T. 262).

44 At the time Wheatley prepared the renewal application, he had available to him the programming information which was filed with the Commission in connection with the application of Eleven Ten to acquire KXLA (T. 263, 332), and the statement in that renewal application reflected the practical application of the statement made

in the original application (T. 263). Wheatley testified that the difference between the two was that the first pertained to the number of spot announcements while the other pertained to the total time period of spot announcements. There were no instructions given him to change the policy and no change of policy from that which had been previously represented to the Commission was intended or proposed (T. 264).

- 45 At the time Wheatley prepared the renewal application, he fully intended to broadcast a program called "Town Crier" and a program called "Town Hall" (T. 373). However, the arrangements for those programs had not yet been completed (T. 269). At that time, August 14, the station had not completed the arrangements for the production of the sustaining religious programs or for the production of discussion and educational programs. Wheatley testified that the programs appearing in the renewal application did not constitute any great departure from the programs proposed

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in the assignment application. They were essentially the same. There may have been a slight difference in time or the length of the program but not in the concept of the programming as it was proposed (T. 269-271, 379, 380 Cf. Ex. 11 of BAPL-171 Official Notice, T. 404).

- 46 It was Wheatley's belief that the station was not physically capable of producing the programs which had been promised in the transfer application until personnel were hired and trained, new equipment installed and a functioning operation established (T. 374-375). The old operation, for example, had no continuity acceptance or production department. All these had to be organized in order to assure satisfactory operation (T. 259-260).

- 47 Had the station been able to get itself organized and functioning smoothly at the outset, the public service programming proposed in the transfer application would have been substantially on the air about

two months after the operations began (T. 384), but there was not enough time to hire personnel (T. 238), evaluate old staff members (T. 239), compose station identification and promotion jingles (App. Ex. 8 pp. 5-19), organize a continuity and production department (T. 255), run a radio station with one format and create a new program format, and at the same time create, promote, and secure acceptance of public service programs. There were not enough hours in the day (T. 373-374).

- 48 Mr. Wheatley's services as program director of KRLA were terminated by an exchange of correspondence between himself and

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Donald Cooke on September 9 and 10, 1959.^{8/} He was succeeded as programming head of KRLA by Herb Heiman formerly of KQV, Pittsburgh, Pennsylvania, who reported for duty at the station on September 20, 1959 (T. 918-919).

- 49 As early as November, 1959, Heiman entered into conversations with representatives of religious organizations in the area looking toward the production of programs in their behalf (T. 927). The occasion was the production of a program which was entitled "Spirit of Today" which embodied religious messages but was not in the nature of a religious service (T. 933-936). This program was in response to a conversation he had with Donald Cooke in which the latter specifically called his attention to the need for development of public service programs (T. 933).

- 50 Pursuant to these plans and conversations, Heiman contacted a number of religious groups, by letter and personally, offering them the facilities of the station and inviting their cooperations. The first program of the "Spirit of Today" was broadcast on December 5, 1959 (T. 942, App. Ex. 22 p. 1). Conversations leading to this broadcast were held with the religious group, Pacific Bible Seminary, at least ten days to two weeks prior to the air date (T. 942).

- 51 It was Wheatley's intention that as soon as the new format of the radio station went on the air to enter into conversations

8/ For the background leading to Mr. Wheatley's departure from KRLA, see pars. 186-189 infra. These details demonstrate the problems that the licensee had to cope with during the initial phases of its operation.

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or correspondence with various educational institutions and groups in southern California to put into effect as quickly as possible the proposals which were outlined in the assignment application (T. 272). This intention was in full accordance with the instructions which he had received from the applicant, and no instructions or indications were ever given to him that the applicant had not intended to carry out these programs (T. 273).

- 52 In line with its representations in the transfer application (App. Ex. 11 p. 2 of application), the station in September, 1959, entered into negotiations with the March of Dimes Foundation which eventually culminated in programming for that organization (T. 74). In October, 1959, KRLA contacted the Lake Avenue Congregational Church in connection with programs which were carried by the station beginning in January, 1960 (T. 173). In addition, as early as June, 1959, the station carried spot announcements for the National Safety Council (T. 164). Beginning as early as October 11, 1959, KRLA carried public service promotions for such institutions as the Boys Republic, the Fire Prevention Week, Muscular Dystrophy, Union Rescue Mission, Foster Parents, Big Brothers, Good Will Industry, Civil Air Patrol, Income Tax Information, Multiple Sclerosis, Diabetes, Cancer, Boy Scouts, National Guards, etc. These public service promotions were predominantly live. They were carried as often as twenty-one times a day (App. Ex. 25, T. 1010).

- 53 As of December 16, 1959, when the Commission first raised this question of program performance, KRLA had not completed

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arrangements for many of the proposed public service programs. As testified by Mr. Wheatley, other problems of a day-to-day nature required all of his time if KRLA were to remain on the air (T. 255, 373-375). In addition, the large and unanticipated financial reverses had absorbed the immediate attention of Donald Cooke (App. Ex. 18 p. 47, T. 807). The question raised by the December 16th letter required immediate action and the other problems were set aside pursuant to specific, direct and mandatory orders to the staff from Donald Cooke. As a result of a "crash" program, public service plans were accelerated (T. 794, App. Ex. 19 pp. 20-25). Before the end of its first year of operation, Eleven Ten had the following record of performance:

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The Operation of Station KRLA

- 54 Radio Station KRLA broadcasts a program service of a so-called "Top Forty" character interspersed with news, sports, talk, discussion, religious, and educational programs (T. 251, 764, App. Ex. 23).^{9/} The music played on KRLA is carefully screened by the announcers, the music director and the program director before being put on the air (T. 1022). Each of the more than 200 records received weekly by the station is qualitatively judged by the program director and the music director with only about 13 out of that number being added to the station's play list (T. 1021-1022).
- 55 The station maintains a full-time director of news and public affairs in addition to a staff of four newsmen and two stringers (T. 185-188) with emphasis on the local news. Newscasts are given every hour (T. 198).

- 56 In addition to this carefully selected music and frequent news, the station regularly broadcasts religious, educational, discussion, etc. programs described in the succeeding paragraphs. Civic leaders and representatives of public service organization appeared and testified on behalf of the station, and their testimony is reflected below.

9/ The Hearing Examiner excluded from evidence Applicant's Exhibit 26 reflecting the percentages of seven days in 1960 (T. 1034). Eleven Ten carries forward its request that the exhibit should be admitted.

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A. Agricultural Programming.

- 57 Agriculture in the News. The station carries two agricultural newscasts daily. These newscasts include farm news and complete agricultural weather forecasts. In addition, 30 seconds of agricultural news is included in every newscast aired on the station (App. Ex. 23 p. 1).
- 58 KRLA Farm Roundup. This program is a 50-minute segment aired each Monday morning from 5:00 to 5:50 a.m. It is a show composed of live and transcribed agricultural information and recorded music. The live portions include weather conditions and frost warnings specifically directed to the farmers of the major citrus crops of the area. Complete weather forecasts for each of the agricultural districts are given. The program also includes a week-end live stock exchange roundup and pertinent local and national farm news (App. Ex. 23 p. 2).^{10/} The time of this program has been recently changed to 6:00 to 6:50 in order to take advantage of additional program material available at that time and to allow for the participation of an additional newsman in the preparation of the show (T. 1027-1028).

10/ During the cross-examination of KRLA's program director, Herb Heiman, Counsel for the Commission sought to elicit information designed to show that this program is not properly classified as agricultural (T. 980 et seq). The burden of the Commission contention

was that, since the majority of the program was composed of music, the entire program should not have been classified as agricultural. The evidence shows that the agricultural content of the program varies from season to season depending upon the interest of the farmers at the time. Testimony by Perry Allen, the announcer on duty at airtime, was that the agricultural content of Farm Roundup ranges from inserts 3 minutes long to inserts 30 seconds in duration (T. 1274). While he was unable to give a precise number of minutes involved in each of the broadcasts, he stated that there will be three inserts per quarter hour "... possibly more. It would vary" (T. 1275).

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- 59 Best Buy of the Day. This program is carried daily Monday through Friday at 10:30 and at 11:45 a.m. It lists the farm products which arrive in Los Angeles in the greatest quantity (App. Ex. 23 p. 3). The information for this program is supplied by Mr. Chevland of the press department of the Federal State Market Service, whom the station calls each morning to obtain the information (T. 1027).
- 60 Frosty's Frost Warning. This is a 2-minute weather show aired three times nightly, Monday through Saturday, during the winter season (App. Ex. 23 p. 4). During the summer season, KRLA carries direct reports from the area ocean beaches as to vacation and water conditions. These reports are received by telephone from selected lifeguard stations and broadcast frequently throughout the day (T. 955).
- 61 Agricultural Weather. This is a complete agricultural weather survey presented daily at 6:45 and 7:45 a.m. (App. Ex. 23 p. 5).

B. Discussion Programming

- 62 Scope Unlimited. This is a half hour taped discussion show aired each Sunday from 10:00 to 10:30 a.m. The purpose of the program is to explore through the discussion with experts the problems and issues of interest to the audience (App. Ex. 23 p. 6). The "Scope" of the program is indicated by the individuals who have appeared on this program such as Dr. Igor Annsoft of Lockheed Aircraft, Dr. Howard Seifert, president of the American Rocket Society, Benjamin Hite, Register of voters of Los Angeles County, Gene Burke of the Los

Angeles Passport Office, etc. (App. Ex. 23 p. 10). The programs are taped by the station at the convenience of the participants (T. 190).

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128 In addition to the Perry Allen Contest, the station ran several other contests during the initial phases of the operation in which the winners were given their prizes (T. 662). One of these contests was the "Golden Key Contest".^{21/}

129 Like the Perry Allen Contest, the Golden Key Contest had its genesis in the uncertainty and confusion which attended the station's switch over to new programming and higher power in order to save itself embarrassment. The contest was conceived to

^{21/} None of the other contests were in issue. An objection was made to this line of inquiry as beyond the scope of the issues but the objection was overruled. The findings are included here only for convenience.

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cover the hiatus that resulted from the station's failure to secure 50 kw program test authority at the desired time. To cover the unanticipated delay, the station ran a contest beginning Sunday, August 30, 1959, the object of which was to get the public to find the key to the station's new 50 kw transmitter. Much publicity and promotion attended the contest. The prize at the opening of the contest was \$50,000 and was reduced as the clues to the location of the key were progressively made easier and more definite (T. 637, 1182, 1183).^{22/}

130 The key was buried by Jack Cooke on August 29, 1959, a day prior to the commencement of the contest (T. 650). The clues were written by Wheatley and a man named Frank Loy (T. 639). When Wheatley wrote the first clues, he did not know where the key was located. All the clues were reviewed by Jack Cooke who knew where the key was hidden to make sure that they were not misleading.

Admittedly, the first clues were not designed to be of much help in finding the key but were very general in nature (T. 663). The first time Wheatley knew where the key was located was late Friday, September 4, or Saturday, September 5, 1959 (T. 650, 1207) after the key was taken from its original location and buried (at a place more accessible to the public) (T. 663, 1210, App. Ex. 27 p. 2). The previously announced clues were still applicable but not very helpful (T. 131).

- 131 After the contest had been on for several days and some time after Wheatley was told the location of the key, Jack Cooke told

22/ The \$50,000 allocation had the expressed approval of Donald Cooke (T. 830).

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him that he wanted the key to be found on Labor Day, September 7, 1959, and that Wheatley was to write clues which were so easy as to make sure that the key was found that day (T. 1206, 1209). The clues were definite enough prior to September 7 for some one to win the prize, since Wheatley had written specific clues as to the location of the key prior to that time (T. 1208).

- 132 On Monday September 7, 1959, at 8 a.m., the value of the clues was \$20,000 (T. 1203). The value of each new clue was progressively dropped until the value reached \$5,000 at 2:45 p.m. when all additional clues were revalued to \$5,000 (T. 1203, App. Ex. 27 p. 16). Although it was originally planned to go down as low as \$2,000, the prize was not decreased after it reached the \$5,000 level (T. 1211, 1212).

- 133 The key was found on Labor Day, September 7, 1959; and the winner was awarded a check for \$5,000 dated that same day (B.B. Ex. 11, 12, T. 1203).

The Transfer of Control Issue

- 154 Issue Four of the Hearing Order reads as follows:
"4. To determine whether, since the date of assignment of license of Station KRLA (formerly KXLA) to the licensee, Jack K. Cooke, a Canadian citizen, has exercised control with respect to the operations of said station contrary to the provisions of Section 310 of the Communications Act of 1934, as amended, and the Commission's rules and policies promulgated thereunder."
- 155 It was always Donald Cooke's proposal to exercise control over KRLA by delegated authority to members of his staff and the original application disclosed his staffing plans (T. 692). Control of the staff was to be maintained by means of "telephone communications, by written instructions from me (Donald Cooke), reports from the general manager and program director, and sales reports" filed weekly. These communications were to be supplemented by personal visits (T. 692).
- 156 Since May 1, 1959, when Eleven Ten became licensee of KRLA, Donald Cooke has received regular written reports, regular sales reports, has been in telephone communications with the staff and has made personal visits to the station (T. 419, 693). Donald Cooke was in Los Angeles for the closing and he discussed with Loyal King, the principal of the assignor, the policies and problems of the station during the interim between the old and new format of operation. King was to stay on as general manager (as represented

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to the Commission in the transfer application) (until such time as the new personnel and programming were prepared and ready to go into operation)(T. 758, App. Ex. 17 pp. 1-5, BAPL-171 Section IV, T. 237).

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CONCLUSIONS

- 1 Any analysis of the evidence of record compels the conclusion that the grant of the pending KRLA applications would serve the public convenience, interest, and necessity. The evidence establishes that nothing has been done which impugns the character, intent or motive of the licensee or reflects adversely upon the ability of the licensee to maintain the presently high standard of service now being provided by KRLA.
- 2 In November, 1958, Donald Cooke, a virtual newcomer to the practical side of day-to-day broadcasting, submitted to the Commission what he believed could and should be the programming of KRLA if he were granted authority to acquire that station. In May, 1959, Eleven Ten (Donald Cooke) assumed responsibility as licensee of KRLA; and since it would have been impossible to change the programming with the staff and facilities with which KXLA had operated as a country music station, it was decided at that time to continue the existing program structure of the assignor for 90 to 120 days pending completion of new technical facilities. While continuing the existing program service, Donald Cooke immediately undertook to create the staff which would be required to produce the program service proposed in the assignment application.
- 3 Within two weeks of assuming control of KXLA, Donald Cooke had selected a new station manager and program director. Each of

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these individuals was selected because Donald Cooke believed that he was qualified to effectuate the promises which he had made to the Commission, which promises reflected Donald Cooke's own convictions and intentions. The program director, William Wheatley, was then employed at WKY where he had successfully blended a "Top Forty" popular music and news format with live religious programs, daily

agricultural information, talk and discussion programs in capsule form. Donald Cooke had personal knowledge of the WKY program format and believed it to be very similar to his proposed program schedule. His belief was confirmed by the opinions of Mr. Wheatley who was given a copy of the proposed KRLA program schedule and advised that this was the schedule which he was to implement and produce.

- 4 Wheatley entered upon his duties seven weeks after Eleven Ten became the licensee. He was granted authority to hire and fire personnel and to take such other steps as were necessary to produce the proposed programs of the licensee. He immediately gave evidence of his knowledge of the Eleven Ten's program plans and policies by cancelling commercial religious programs and night club remotes with monthly billings in excess of \$11,000 in order to clear the way for the new program schedule. If any doubts as to the intentions of the licensee existed, it should be resolved by these acts alone.

- 5 The "clearing of the decks" was accompanied by a recruitment of personnel, the creation of an operating organization, and the

design and construction of new facilities. Wheatley testified that these efforts, together with the maintenance of the existing KXLA service, required all of his time in a work day of 14 to 18 hours and that it was physically impossible to spend the time required to contact public service organizations and create programs for use. It was Wheatley's intention to fully implement the program representations as soon as it was physically possible to do so. ^{31/}

- 6 In August, while the licensee was trying to maintain an existing program service, create a new program format, pacify a staff that was being fired, and hire a staff to replace the old, it became necessary to prepare and file an application for renewal of license. This renewal reaffirmed the original intentions of Eleven Ten as known and interpreted by Wheatley. The renewal application reflected minor modifications based on current knowledge, but there was no intent, manifested or concealed, to change the basic program concepts. ^{32/}

- 7 The existing pressures and problems were further compounded on August 20, when Donald Cooke vetoed Wheatley's efforts and decisions concerning staff and programming implementation and instituted a new

31/ The Commission does not expect literal compliance with programming representations because of intervening causes. McClatchy Broadcasting Company, 9 RR 1190, 1208 (1954); Superior Television, Inc., 11 RR 1173, 1230 (1956); Fernandina Beach Broadcasters (Initial Decision) made effective, 25 FCC 234, 17 RR 517 (1958). Certainly, the Commission does not expect the program proposal to be effectuated immediately following licensing, Blackwater Valley Broadcasters, 13 RR 32d (1956).

32/ The Commission has held on numerous occasions that the fact that performance differed from promise does not indicate that the promise was fraudulently made. See Sevier Valley Broadcasting Co., 7 RR 327 (1952); Rev. J. Richard Sneed, 15 RR 158 (1957); Telrad, Inc., 24 FCC 191, 16 RR 231 (1958).

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effort to create a staff and produce a new program format in approximately one week's time. In his desperate effort to bring order out of chaos and superiority out of mediocrity, Donald Cooke enlisted, on a temporary and emergency basis, the talents of his brother Jack Cooke. During all these times, the station was constantly losing money.

- 8 Jack Cooke, who, as lessor of the physical assets, had a large financial interest in the future success of KRLA and was motivated primarily by a strong brotherly affection, agreed to lend his not inconsiderable experience and talents to the problem of creating a program staff with a new and distinct personality capable of producing the proposed program service. He served at Donald's request, and his decisions were subject to Donald's authority and approval. Within approximately one week, new announcers were hired, new formats created, new sounds devised, new promotions conceived--all under the panic pressure of a fast approaching deadline--scheduled for September 1

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In the discharge of his voluntary duties, Jack Cooke possessed the same authority as would be vested in any trusted employee charged with the responsibility for the program department. It was the same authority that had been given to Mr. Wheatley who was to continue in his position and resume his authority once the station got on the air with its new facilities and new program. Wheatley resigned on September 9, and Jack Cooke remained at the station until responsibility could be turned over to another employee. Herb Heiman had

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been hired as production manager; and when Heiman reported for duty on September 20, Jack Cooke turned over his duties to him and left the station. From that date on, Jack Cooke did not return to the station, gave no orders or instructions to any employee, and has not participated in the direction or control of the operation of KRLA in any manner. Except for the brief period when he acted as program director, Jack Cooke has never made decisions for the licensee or issued orders to its employees. It is earnestly submitted that the exercise of these temporarily assigned duties, on all other occasions vested in an employee, cannot be held to constitute a transfer of control. See Standard Broadcasting Corporation, 29 FCC 1122, 1181 (Initial decision affirmed by the Commission, 29 FCC 116). They were not connected with nor did they flow from Jack Cooke's position as a creditor or lessor of the licensee. They were duties assumed under emergency conditions at his brother's request and were exercised only so long as the emergency existed. At all other times, Jack Cooke's relations with his brother have been that of a trusted and experienced advisor whose opinions have been utilized by the licensee in the exercise of its own ultimate judgment. The debtor-creditor-lessor-lessee relation of Jack Cooke and the licensee has had no bearing or influence upon the licensee's control of the operation. ^{33/}

33/ Any conceivable impression--not evidence-- to the contrary can only be based on Wheatley's surmises. The Commission, of course, will not base a determination on surmises when there is actual evidence to the contrary. Mid-Atlantic Broadcasting Co., 22 FCC 239, 14 RR 1275 (1957).

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- 10 All of the evidence establishes that the period immediately proceeding the commencement of the 50 kw operation was one of tremendous tension and great uncertainty, primarily created by engineering problems which made definite plans impossible. During this time, plans were made for several station promotion contests designed to publicize the new power, staff and call letters and, at the same time, offer to the community a plausible explanation for the station's failure to meet publicized operating schedules. One of the contests, borne of unplanned circumstances, was necessary to cover the fact that "Perry Allen," the new morning announcer, could not report for approximately two weeks. As a result, a "Find Perry Allen" Contest was conceived which invited KRLA listeners to find Perry Allen's appearance or identifying characteristics and his discovery by any one not otherwise familiar with his appearance was patently improbable, if not impossible, even if Perry Allen had been in Los Angeles. No reasonable person would have been induced to search for Perry Allen in Los Angeles upon the basis of the clues broadcast. Subsequent clues would have been designed to encourage such participation, and Allen would have been available for discovery at that time. It may be conceded that the announcements aired by the station implied that Perry Allen was in Los Angeles when the contest began, although, in fact, Perry Allen was still in Buffalo, New York, where he was a well-established personality.

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- 11 It was always the intention of the licensee that Perry Allen would be "found" by a KRLA listener. The purpose of the contest was to build audience interest in Allen's appearance on KRLA, and as originally conceived, that interest was to be built up over a period until he could be made available in Los Angeles at which time the chances would be increased in number and specificity as to induce audience participation and assure Allen's discovery. The contest was deliberately misused by another Los Angeles radio station for its own competitive purpose. It sent its employees to Buffalo to identify Perry Allen but refused to participate in the promotional publicity which the contest was intended to create. Nevertheless, KRLA honored the claim. There is no evidence that any KRLA listener was misled or induced to act contrary to his best interest by the contest announcements.
- 12 Whatever argument can be made as to the wisdom of the contest, it is earnestly submitted that the evidence cannot be held to support a conclusion that the station was operated for improper purposes contrary to the public interest. This conclusion is further supported by the fact that all of KRLA's other promotion contests were conducted in accordance with the announced rules and prizes in very substantial amounts were paid as promised to the winners. No listener of KRLA ever indicated in any way that he was misled by any contest announcement or induced to act in any manner contrary to his welfare or the public interest.
- 13 Insofar as the facts relating to Issue No. 3 are concerned, the record establishes that the logs were altered by the station

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manager without the knowledge or consent of the licensee and that the true facts surrounding his actions were concealed from the licensee. The issue, as framed, merely questions whether the alteration was

made with the "intent and purpose of deceiving the Commission" but to be meaningful it must be assumed that the question of "intent and purpose" applies to the licensee. The act in question was performed by an agent of the licensee without the consent or knowledge of the licensee; the act was beyond the authority of the agent, and the act was never ratified, approved, or condoned by the licensee.

- 14 The individual responsible for this act is no longer employed by the licensee, and his intent or motives are not of record. No matter what the intent or purpose of the employee may have been, that intent cannot be imputed to the licensee. It is the well accepted general rule that a principal is not responsible for the criminal acts or misdeeds of his agents "unless he in some way participates in, countenances, or approves of what they do . . . He must have knowledge of, and give his assent to, that which constitutes the violation of the law; in other words, the agent or servant must be acting with the principal's or master's authority."^{34/}

- 15 In this instant matter, it is clear that the licensee did not participate in, countenance, approve, have knowledge of or assent to the modification of the logs. The facts establish that the

^{34/} 2 Am. Jur § 383. See Lurding v. U.S., 179 F.2d 419 (6th Cir. 1950). In fact, Federal Courts sitting in California have so held, U.S. v. Corlin, 44 F. Supp. 940 (D. S. Cal., 1942); U.S. v. Food and Grocery Bureau of Southern California, 43 F. Supp. 966 (D. S. Cal., 1942).

licensee acted with due care and prudence in the selection of the employee and cannot and should not be charged with wrongful intent or purpose where one of its employees violated his trust without the knowledge or consent, prior or subsequent, of the licensee.

- 16 In spite of the tremendous handicaps under which the licensee operated during the first year of its existence, it has established itself in the community as a desired, if not required, institution. Its record

of achievement has been established upon the record not only by its own testimony but by the testimony of the community itself. The responsible citizens who appeared on behalf of religious, civic, educational and charitable organizations gave their unqualified endorsement to the licensee and paid specific tribute to the service which KRLA has and is rendering. This evidence was not offered in the compressed form of platitudes or generalities tendered in charity to one in trouble. These representatives testified as to the specific deeds and programs of KRLA and in almost every instance the specific reference was to an unique and unduplicated effort.

- 17 Can the Commission possibly conclude that it would be in the public interest to terminate the broadcast service which offers the only Catholic Mass in the State of California; the only regular hour-long service by a Los Angeles Protestant church; one of the two regular sustaining programs carried by Los Angeles radio stations on behalf of the ministers and representatives of the Protestant, Catholic, and Jewish faiths; the only radio service which offers unique coverage in depth to numerous civic, charitable

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and educational organizations to a degree that distinguishes its efforts from all other radio stations in the community? 35/

- 18 The record is clear that, in less than one year from the date that the licensee assumed control, it not only fulfilled all of its program representations to the Commission but established for itself a record of sensitive and responsive service to the community. This record reflects an ever increasing knowledge of the area being

served and confirms the licensee's intention to render the best possible service consonant with its ability--an ability which has been proven and established. This record cannot be minimized by the argument that part of it was achieved after the Commission initiated an inquiry. The inquiry started less than six months after the assignment and less than two months from the date the licensee initiated any part of its proposed service.

- 19 WHEREFORE, the premises considered, it is submitted that the application of Eleven Ten Broadcasting Corporation for renewal of license (BR-1189) and for license to cover construction permit (BL-7701) be granted.

Respectfully submitted,

ELEVEN TEN BROADCASTING
CORPORATION

By /s/ Thomas N. Dowd

By /s/ William S. Green

March 13, 1961

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35/ The answer is apparent from Commission precedents. Assuming, arguendo, that there has been any impropriety at all disclosed by the instant hearing, the quality of KRLA's present programming alone would dictate the grant of a renewal. See Sunland Broadcasting Co., 6 RR 1053 (1951); The Northern Corporation, 5 RR 673 (1950).

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[Received March 13, 1961 - F.C.C.]

BROADCAST BUREAU PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW

* * * * *

[905]

* * * * *
ALTERATION OF PROGRAM LOGS

19. The record is clear and our findings reflect that the program logs of KRLA were altered for each day of the week of October 18-24, 1959, by the addition of the words "Word For The Day" or "Thought For The Day". The additions to the log are listed as being two minutes in length and are classified as religious. These additions were made with the intent and purpose of deceiving the Commission with respect to the amount of religious programming carried by the station. Had the logs not been altered the licensee's report to the Commission would have shown no religious programming for the week in question. The licensee's report on this matter, made by Schulz, was false. Don testified that Schulz in Heiman's presence told him these programs were broadcast and Heiman testified that he did not advise Don to the

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contrary until after Don responded to the Commission's 309(b) letter of December 16, 1959. Although Don knew that Schulz had misrepresented with respect to the Perry Allen contest, he affirmed such misrepresentations in his affidavit of February, 1960. Don's failure to conduct an adequate investigation to determine the true facts must be held to be a derogation of his licensee's responsibility. Had he questioned all of the personnel involved, as he represented to the Commission, 1/ it is inconceivable that he did not in fact discover that the program was not broadcast, before affirming Schulz's representations.

20. The conclusions reached above can lead to but one ultimate conclusion -- that a grant of Eleven Ten's application for the renewal of license of KRLA would not serve the public interest, convenience or necessity. This result is compelled not only on the basis of the conclusions we have reached under the specific issues, but is dictated also since the evidence demonstrates that Eleven Ten as a licensee has been shown to have a proclivity for knowingly furnishing false and misleading information to the Commission.

* * *

1/ Page 2 of affidavit of February 12, 1960.



INITIAL DECISION OF HEARING EXAMINERS
JAMES D. CUNNINGHAM AND HERBERT SHARFMAN

Preliminary Statement

1. The applications of Eleven Ten Broadcasting Corporation for renewal of license of standard broadcast Station KRLA, Pasadena, California, and for license to cover construction permit, were designated for hearing by order released July 5, 1960, upon the following issues:

1. To determine whether, in light of its operations since it acquired Station KRLA, the licensee's program proposals contained in its application for Commission consent to assignment of the license of Station KRLA (then KXLA) (BAPL-171) were made to good faith;
2. To determine whether, in light of the manner in which the "Find Perry Allen" contest was conducted by Station KRLA in and about September, 1959, the licensee operated said station for improper purposes contrary to the public interest;
3. To determine whether the station's program logs for the week of October 18-24, 1959 were altered with the intent and purpose of deceiving the Commission.

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4. To determine whether, since the date of assignment of license of Station KRLA (formerly KXLA) to the licensee, Jack K. Cooke, a Canadian citizen, has exercised control with respect to the operations of said station contrary to the provisions of Section 310 of the Communications Act of 1934, as amended, the Commission's rules and policies promulgated thereunder;
5. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether a grant of the above-entitled applications would serve the public interest, convenience or necessity.

2. Prehearing conferences were held on October 3 and October 28, 1960. The hearing began in Los Angeles, California, on October 31, 1960, and continued through November 9, 1960. A final hearing session was held in Washington on December 22, 1960, when the record was closed. Proposed findings of fact and conclusions were filed by applicant and the Broadcast Bureau on March 13, 1961. At the conference of October 28, 1960, counsel consented to the presiding Hearing Examiner's association with another Hearing Examiner of the Commission in the preparation of the Initial Decision.

Findings of Fact

3. On October 22, 1958, there was filed with the Commission an application to assign the license of Station KRLA,^{1/} Pasadena, California, from Pacific Coast Broadcasting Company (Pacific) to Eleven Ten Broadcasting Corporation (Eleven Ten).^{2/} Donald Cooke (Don) a United States citizen was and is the sole stockholder of Eleven Ten. Under the original terms of this assignment application, Eleven Ten was to acquire only the license of KRLA, and a company named Broadcast Equipment Corporation (Broadcast Equipment) was to acquire all of the physical assets of KRLA.^{3/} Broadcast Equipment was and is owned by

^{1/} On August 31, 1959, the call letters of KXLA were changed to KRLA. Throughout, the station will be referred to as KRLA.

^{2/} All of the assignment application and associated material was incorporated by reference by ruling of the Hearing Examiner.

^{3/} By a purchase agreement of October 10, 1958, between Don and Pacific, Don was given an option to acquire all of the assets of Pacific. Don then assigned his rights in the agreement to Eleven Ten. Subsequently, Eleven Ten notified Pacific it elected to exercise the option and that it had assigned to Broadcast Equipment the right to acquire the physical property, land and transmitter leasehold of Pacific.

Donald Cooke's brother, Jack Kent Cooke (Jack), who was a citizen of Canada at the time of this hearing.^{4/} Broadcast Equipment was committed

to purchase from Pacific all of the latter's physical equipment, land and transmitter site leaseholds for \$553,680, plus an amount equal to any cost expended by Pacific for the construction of its newly authorized 50 kw facilities up to the time of the purchase, and to assume and perform all contracts of Pacific for such construction.^{5/} Broadcast Equipment was required at its own cost to install any and all equipment and facilities necessary to enable KRLA to operate with its new facilities. By agreement, Broadcast Equipment was to lease these physical facilities to Eleven Ten for a period of 10 years at a rental of \$50,000 a year.

4. Broadcast Equipment held an option, good until November 21, 1965, to purchase all the stock of Eleven Ten for \$250,000. Its option was to be exercised by Broadcast Equipment or its assignee only when it or its assignee possessed the necessary qualifications to be a licensee of a broadcast station. The option expressed provided that until the purchase of the stock or the transfer of the license, "Broadcast Equipment, its assignee, employees and agents shall not directly or indirectly control, supervise, direct, or attempt to control, supervise or direct the operation of Radio Station KXLA."

5. The total consideration to be paid to Pacific was \$900,000. Broadcast Equipment paid Pacific \$553,680 for certain physical assets, leaving a balance of \$346,319 to be paid by Eleven Ten for assets which would include \$246,319 in cash derived from the sale of securities owned by Pacific. This \$246,319 was to be applied to reduce the sum paid by Eleven Ten to \$100,000, which was the amount already deposited by Eleven Ten in escrow against the purchase price. Don's source of funds was as follows: He was to pay \$10,000 for the stock of Eleven Ten from money acquired by him in the ordinary course of his business.

^{4/} Jack Kent Cooke is the beneficiary of Private Law 86-486, 86th Congress, H. R. 8156, approved September 14, 1960, providing that he should "be held and considered to have been lawfully admitted to the United States for permanent residence on September 28, 1953. . . ". A Canadian citizen at the time of the hearing, he there testified to

his intention to become an American citizen "in a matter of weeks". He has very extensive Canadian business interests. Jack had also been interested in investing in broadcast property in the United States, but was advised by his attorneys he could not own an American radio station because of his Canadian citizenship. He owns 100% of the stock of CKEY, Toronto, and for 11 years has been consultant to the CKOY, Ottawa. He is not shown now to be an American citizen.

^{5/} On November 12, 1958, a construction permit was issued to Pacific authorizing KRLA to increase power from 10 to 50 kilowatts, daytime. Official notice is taken of this action.

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Eleven Ten, with the individual guarantee of Don, obtained a loan of \$100,000 from the Chase Manhattan Bank. The Royal Bank of Canada offered to purchase the note of Eleven Ten at any time Chase Manhattan wished to sell it. Chase Manhattan was to call upon the Royal Bank of Canada to purchase the note of Eleven Ten. Jack orally agreed to hold the Royal Bank harmless, thereby precluding any possibility of a default judgment being entered against Eleven Ten.^{6/}

6. On January 28, 1959, the Commission addressed a Section 309(b) letter to Don and Pacific raising the question whether the real party in interest in the assignment was Jack, since substantially all the money needed to finance the purchase was to be furnished directly or indirectly by Jack. It also questioned " . . . whether the public interest is served by a grant of a license to one who has committed himself prior to such grant to a transfer of control of the licensee."

7. To justify a grant of the assignment application as originally filed, Don submitted a letter on February 14, 1959, in which he stated, among other things:

"In order that our answers may be considered in their proper perspective, it appears desirable at the outset to briefly review the general background of the proposed-acquisition of KXLA as set forth in our application. Donald R. Cooke, an American citizen, became interested in acquiring Radio Station KXLA, Pasadena, California. This station was available for purchase at a cash price of

approximately \$900,000. Since a cash purchase price of this amount was beyond Donald's own personal financial resources, he discussed the matter with his brother, Jack Kent Cooke, a Canadian citizen, and a person of considerable financial means. The two brothers recognized from the outset that Jack as a Canadian citizen could not own, control or participate to any significant extent as an equity owner in an American broadcast station because of the restrictions upon alien ownership and control as set forth in Section 310 of the Communications Act. However, Jack was willing to render financial assistance to his brother if a way could be found to do so, which on the one hand, would be prudent from a business viewpoint and, on the other hand, would satisfy all requirements of the Federal Communications Act . . .".

^{6/} Jack had previously helped out his brother financially in the organization of Don's firm, Donald Cooke, Inc. (see below).

In addition, Don stated:

"... it was recognized that Jack could not participate in the ownership or control of KXLA, either directly or indirectly, so long as he was a Canadian citizen. . .".

8. On March 16, 1959, the assignment application was amended to eliminate the option held by Broadcast Equipment.^{7/} For this concession, Eleven Ten agreed to an increase in the rent to be paid to Broadcast Equipment from \$50,000 to \$90,000 a year and Jack was released from the indirect guarantee of the \$100,000 loan that Don had made with the Chase Manhattan Bank. Eleven Ten then arranged to borrow \$100,000 from Empire Trust Company which was used to pay off the loan from Chase Manhattan. This loan was personally guaranteed by Don. Eleven Ten executed a promissory note for the \$100,000. Don

pledged as collateral everything he owned, including all the shares he owns in Donald Cooke, Inc., all the issued and outstanding common stock of Eleven Ten, and his home and car.^{8/}

9. Jack did not advance all of the funds to acquire the station on advice of counsel, who decided that Don should contribute the balance (\$110,000). Don understood that he should make this contribution because " . . . if I were to control the station, I would have to have a certain valuation . . . involved in the transaction itself." He testified, however, that he "had always intended to put up money for my part of the transaction." There was no provision in the assignment application committing Broadcast Equipment to loan funds to Eleven Ten. In the assignment application Don represented:

"Mr. Cooke [Don] has made and will continue to make frequent visits to California, and, while he will maintain his principal office in the City of New York, he will spend at least 1/4 of his time at Pasadena in the active operation of Station KXLA. Mr. Cooke will employ a competent full-time station manager, and Mr. Cooke anticipates that 1/4 of his own time will enable him to provide through KRLA a program service which will meet the needs of the listeners within its service area. If additional time at the station appears needed or desirable, he will spend more time there."

^{7/} The option was eliminated to avoid a hearing on the assignment application and the delay which would result. Don felt that the purchase agreement with Pacific might lapse before Commission action was forthcoming.

^{8/} Donald Cooke, Inc. is a radio representation firm of which Jack and Don are each 50% shareholders.

10. Jack first became interested in securing an investment in United States broadcast properties some time in 1950 and conferred with counsel. He was advised that since he was an alien, he was ineligible to be a licensee. For this reason he then dropped the matter. In the early part of 1958, he again discussed with the same counsel the possibilities of investing in a broadcast station in the United States. He was advised that this could be done by a leasing arrangement with an eligible licensee. The general formula of not paying more than ten times the earnings of a radio station was accepted as the standard for the purchase price. This formula was the only ceiling or limitation on the money to be invested.

11. In September 1958, after considerable study of the field, including consideration of Philadelphia, St. Louis, Louisville, and Miami, Jack first considered buying Station KRLA, Pasadena, California. He had been told by friends and business acquaintances that KRLA, a 10 kilowatt station, with an application pending for 50 kilowatts, might be for sale. Before September 1958, Jack had not known that the station was for sale. About September 6, 1958, he was introduced in Los Angeles to Loyal King, the principal shareholder, president and general manager of Pacific, licensee of KRLA. Beginning early in September 1958, he had many meetings with King until about September 20, in which they negotiated for the sale of KRLA. Jack had informed King at the outset of the negotiation that he was a Canadian and King was told of the plan advanced by Jack's counsel, that is, Jack's acquisition of the physical assets and Don's acquisition of the license. By the time Jack left Los Angeles about September 20, 1958, he and King had agreed upon a price for the purchase of KRLA. All that remained was the drafting of the contract of sale.

12. Don was first told that KRLA might be for sale in the first week of September 1958, when Jack called from Los Angeles to tell him he had been talking to King. Jack informed Don of KRLA's frequency, power, and the pendency of the 50 kilowatt application. The negotiations

were concluded and the purchase price agreed to by Jack without having examined the books of the station licensee. Don was committed to a purchase price by Jack without having any actual first-hand knowledge of the financial condition of the station.^{9/} The important thing, Jack informed Don, was that the application for 50 kilowatts was pending. Jack then met with Don in New York on September 21 and again described the purchase. Subsequently, in the latter part of September 1958, Don, Jack, and counsel met often to discuss the contract to purchase.^{10/}

^{9/} Jack testified that he told Don the financial operating records of the station ". . . would be of no great moment in the operation because it was a country and western music radio station."

^{10/} Jack testified that after completing the negotiations with King, he stepped out of the picture; for he stated that after September 20 ". . . Mr. Dowd and Donald pretty well took over the arrangements that were necessary" to complete the purchase.

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13. On October 10, 1958, a purchase agreement between Pacific and Don was signed by Don in New York City. (This purchase agreement is part of the associated material in the assignment application which was incorporated by reference in this proceeding). Section 5, paragraph (c) of the agreement stated that Don had examined and knows the condition of the premises covered by the agreement. Don, however, had signed the purchase agreement without ever having seen the premises. In fact, Don's first visit to Pasadena was after the consummation of the assignment on May 1, 1959.

14. As a part of the assignment application, there was attached a proposed program schedule and policy statement, which, according to the application, had been prepared under Don's supervision. The record reflects that Don, Jack and counsel prepared this material. Counsel guided Jack and Don in the preparation of the proposed program schedule and policy statement. The program schedule was

"fairly well" patterned after that of Station CKEY, Toronto, Canada, which is owned by Jack. Don recommended no specific program incorporated in the schedule.

15. The following findings relate, among other things, to Jack's activities in connection with the operation of KRLA after the Commission consented to the assignment application on March 25, 1959.

16. Eleven Ten assumed operation of KRLA on May 1, 1959. Jack arrived in Los Angeles on April 30 and remained through May 13. He attended the closing on May 1. King was asked by Don to remain as general manager of KRLA and he continued in that position until July 3. During this period Jack saw King about "three, four, five times." These visits, he testified, were primarily social, although King told Jack how work was progressing on the 50 kilowatt construction permit. Jack visited the studios of KRLA some three times during the period April 30 through May 13, and also visited the transmitter site.

17. Don arrived in Los Angeles about April 28 and remained until about May 5. He spoke to and met Loyal King for the first time on about April 30 or May 1, 1959. (May 1 was the day of the consummation of the assignment). Don authorized King to sign checks on behalf of Eleven Ten, and during May he instructed him with regard to various matters relating to the operation of KRLA.

18. William J. Wheatley came to New York on May 15, 1959, at Don's suggestion, to be interviewed for the position of program director of KRLA. Wheatley first met Don at Don's office for about 15 minutes. Then both of them went to meet Jack, and for about two or three hours Wheatley and Jack discussed radio programing in general terms in Don's presence. Virtually all of Wheatley's discussions of programing while he was in New York were with Jack. He spent many hours talking about programing with Jack, who described to Wheatley the types of radio

service available in Los Angeles. They discussed how KRLA should be programed. Wheatley and Jack compared the programing of Station WKY, Oklahoma City, Oklahoma, where Wheatley was then employed, with Jack's station, CKEY, Toronto, Canada.

19. While in New York neither Jack nor Don discussed with Wheatley educational, religious, or any other type of "public service" programing. Wheatley did not recall having been shown the assignment application that had been filed with the Commission, or its programing representations. Don, however, testified that he hired Wheatley partly because he was impressed with Wheatley's past experience in putting on religious sustaining, educational, talk, discussion, and agricultural programing. Don wanted Jack's opinion of Wheatley, and Jack told him that Wheatley had excellent experience with popular music programing. Wheatley was hired as program director of KRLA.

20. Edwin V. Schulz came to New York on May 16, 1959, at Don's suggestion, to be interviewed for the job of general manager of KRLA. Don spoke to Schulz and then he introduced Schulz to Jack. Don wanted Jack to appraise the abilities of Schulz because of Jack's greater experience in operating a radio station (Don's experience had been mostly in sales). Schulz was offered the job of general manager during this visit. He reported at KRLA about July 15, 1959.

21. Wheatley reported to KRLA on July 1, 1959. Pursuant to instructions from Don, he was to assume general supervision of the station for two weeks pending the arrival of Schulz, the new general manager. It was within the scope of his authority as program director to hire new personnel to carry out the programing of the station, and he was to have complete charge of all programing. Wheatley performed these duties until about August 20, 1959.

22. From May 1 until KRLA received authority to begin program tests with its 50 kilowatt operation, the programing of the station was to continue as it had under previous ownership, with country and western music. It was hoped that the permission to operate with 50 kilowatts

would be received by August 1 and that simultaneously with operation with increased power the programing format would change to Top Forty - music and news. In addition, the same policy with respect to non-commercial spot announcements was followed. This policy was "very casual," and consisted of scheduling "a certain number of non-commercial spots throughout the day based upon current needs."

23. Shortly after Wheatley arrived he canceled commercially sponsored religious programs or originations from night clubs, because they were not considered to be acceptable under the new Top Forty format. Wheatley advised the churches concerned that "in the near future KRLA will institute a round-robin of broadcasts from the various churches,

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costs which will be borne by KRLA." Before this Don had specified that contracts for current commercial religious programs would not be renewed because of the new Top Forty schedule which was to begin September 1, 1959.

24. Jack arrived back in Los Angeles on July 6, 1959, and remained until July 23, 1959. During this period Jack worked with Schulz and Wheatley on a budget for KRLA. They met daily for about four days to establish how much it was going to cost on a month-to-month basis to operate the station, and to set revenue goals for the sales department to meet operating expenses. In these discussions decisions were arrived at mutually. Jack worked with them and a third person (whose name is not disclosed in the record) on setting up forms to be used in the internal affairs of the station. In addition, he worked with Schulz on organizing the sales department of KRLA, and Dobson, the accountant, on setting up sales reports. During Jack's July 6-23 visit, he and Dobson met to discuss the preparation of budgets for KRLA for the remainder of 1959 and for part of 1960. Dobson prepared many budgets pursuant to Jack's instructions. He also received instructions from Schulz with regard to these budgets, but not from Wheatley. Jack did not inform

Dobson that he was imparting these instructions at Don's request. In a letter by Don to Schulz dated July 29, 1959, Don wrote that he had seen copies of the working papers Jack used to describe to Dobson the method of preparing the budget and weekly sales reports for KRLA. Neil Watt, the accountant for Jack's Station CKEY, Toronto, furnished many of the working papers and methods of accounting now being used on KRLA. In July 1959, for about one week, Jack was at the station for a couple of hours in the morning and sometimes later again in the afternoon, and he had desk space at KRLA's studio. In these visits he discussed with Dobson the setting up of budgets, reports, and financial reports of KRLA. Financial and budget reports prepared by Dobson were mailed to Jack after he had left Los Angeles at his direction. Also at Jack's direction, Dobson sent a profit and loss statement to Jack in Toronto, as well as to Don. During this period in July, Jack also directed Dobson to change the method of reporting depreciation on financial statements. Jack asked Dobson to handle the bookkeeping of his company, Broadcast Equipment, an operation he described as "minuscule" because it consisted only of the posting of the rental checks. Dobson set up the books for Broadcast Equipment. The address of Broadcast Equipment is KRLA's studio in Pasadena. Its ledgers and books of original entries are kept at the station's studio and are now maintained by Donald Fry, the present accountant for Eleven Ten. From the time the assignment application was approved, until February 9, 1960, various employees of Eleven Ten were authorized to sign checks on behalf of Broadcast Equipment. Dobson and Fry performed all these functions as part of their regular duties as employees of

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Eleven Ten. When Fry was employed, Schulz directed him to maintain the records of Broadcast Equipment.^{11/}

25. Wheatley mailed Don a tape recording of promotional jingles (the Dallas Jingles) recorded for Station WKY, Oklahoma City, Oklahoma.

Don approved the purchase of these jingles, the only limitation being his indecision as to whether they should be purchased for cash or on a barter basis. Thereafter, these same jingles were recorded in Los Angeles for KRLA and bought by Wheatley on behalf of Eleven Ten for \$2000 cash and a dollar value of spot announcement time on KRLA (variously estimated as from 12 to 20 thousand dollars), which the producers of the jingles could sell for cash. The jingles were never broadcast over KRLA because Jack did not consider them to be suitable for use on the air.

26. Don, as already indicated, arrived back in Los Angeles on August 12 and remained until August 21, 1959. Most of his time was spent in the Hollywood sales office organizing the sales department. He visited the studios of KRLA on August 20 for the first time. He saw Wheatley twice prior to August 20, once on August 12 at an advertising agency and on August 17 when the jingles described above were recorded. On August 18, 1959, Wheatley, in a memorandum to the staff of KRLA, declared that there would be a presentation or "dry run" on August 20 for Jack and Don, among others. Jack arrived back in Los Angeles on August 19. He came to Los Angeles, he testified, "to help him with any of the problems that are almost, inevitably attendant on the opening of a station, to lend [Don] assistance, guidance, sympathy, comfort, and to enjoy the opening promotion of the KRLA campaign . . . ". Jack testified that upon his arrival, Don informed him that ". . . [KRLA] was a mess."^{12/}

^{11/} There was considerable record evidence of written reports and instructions between Don, Schulz and other employees, in 1959 and 1960. In addition to these communications between Los Angeles and New York, Don visited Los Angeles on the following occasions: April 29 through May 4, 1959; August 12 through August 21, 1959; November 9 through November 20, 1958; January 22 through February 10, 1960; March 14 through March 18, 1960; and June 6 through June 30, 1960.

^{12/} The Broadcast Bureau questions the credibility of this testimony on the ground Don was not then sufficiently informed of KRLA's operations

to make an authoritative statement of its condition, as since August 12 he had spent most of his time in the KRLA sales department and did not visit the studios until August 20, the day of the dry run. Obviously it is impossible to hold, however, that Jack's testimony is incredible merely because Don may have overestimated the extent of his knowledge of KRLA. In any event, the "mess" referred to was not explained in the record; it may, indeed, have related to Don's knowledge of the sales department.

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27. On August 20, 1959, the dry run as scheduled was held at the studios at KRLA. Its purpose was to present on the air, personnel hired by Wheatley. Each disc jockey Wheatley had hired did a simulated 30-minute program while Jack took notes. Don testified that he had asked Jack to note his comments as to the announcers, the pace, how fast the operation should be, and the general running of a Top Forty-type station, since he felt that Jack's past knowledge and experience made him better equipped for the purpose than he was. Jack was "shocked" by Wheatley's choice of disc jockeys and he so informed Don. During the dry run, Jack made many remarks to Wheatley such as "This man has no business being a disc jockey," "This man should never have been hired," "What were you thinking about when you hired this man" and "This man has got to go." Don testified, however, that during the dry run Jack stated that he considered a disc jockey named Frank Pollack to be unsatisfactory, but that Don disagreed and Pollack's employment was not terminated at that time. Wheatley testified that he was present throughout the dry run and recalled "overhearing" no such conversation.^{13/}

28. That evening Jack, Wheatley, Schulz and Don met at the Hollywood sales office. Jack repeated to Wheatley in substance the same remarks he had made earlier that day. Audition tapes of disc jockey applicants who had not been hired by Wheatley were listened to and analyzed by the group. Wheatley testified that Jack determined

which applicants should be contacted as possible disc jockeys for KRLA.^{14/} It was decided that Don, Wheatley, and Schulz would contact the likely prospects.

29. Don left Los Angeles for New York the next day, August 21, 1959, because of "personal and business reasons." He asked Jack to take over the duties of program director.

^{13/} The Broadcast Bureau's proposed findings are so couched as apparently to suggest a finding that because of the alleged discrepancy between Wheatley's and Don's testimony, Don's must be discredited. It must be noted, however, that Wheatley's testimony was in the form of "negative evidence" -- he did not "overhear." He was not directly asked whether Don and Jack had disagreed about Pollack. Consequently, the impeaching power of Wheatley's testimony here would be insufficient to discredit Don's.

^{14/} Jack testified that it was determined ". . . by the group mutually" which applicants would be contacted.

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30. After Don left on August 21, 1959, Jack, at a meeting on August 23, advised the staff that Wheatley was still program director and that they were to take their orders from Wheatley. Thereafter, Wheatley^{15/} reported to Jack and not to Schulz, the general manager. Subsequent to August 20, Jack actively participated in the organization of the staff and gave instructions to on-the-air personnel.

31. Jack also worked with the sales department, and with the accounting department establishing reporting procedures for sales reports and projected revenues for KRLA. In addition, he worked on setting up bookkeeping procedures. These were all duties which Wheatley had never performed as program director. Prior to September 14, Jack visited the McCann-Erickson Advertising Agency, the manager of Western Airlines, and two other advertising agencies whose names he does not recall, for the purpose of trying to sell advertising time for KRLA. Jack saw an account executive for McCann-Erickson two times to urge

him to buy time for Coca Cola on KRLA. Subsequently, Jack spoke to this account executive over the telephone and Jack was told that the Coca Cola account would not come to KRLA.

^{15/} Wheatley, about August 21 or 22, tried to resign as program director, but Schulz told him he would have to tender his resignation to Don, who had hired him. He tendered his resignation to Jack, who refused to accept it for the same reason. Finally, he was allowed to resign by Don, who required him to execute a covenant not to compete in the market. The resignation was effective September 11, 1959.

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32. Jack also met with Schulz and the Eiseman-Johns Advertising Agency to plan a promotional contest for KRLA. The promotion was to use newspaper advertising to promote a \$25,000 contest based on identifying the pictures of KRLA's disc jockeys.

33. During the period August 21 to September 15, 1959, while Don was in New York, he received no written communications from Jack, although he discussed the progress of the programing, the problems inherited from Wheatley, and the promotions and contests KRLA would be sponsoring with Jack on the telephone.

34. The August 23, 1959, meeting mentioned above, was attended by Jack, Wheatley, Schulz, and all of the disc jockeys and newsmen. Schulz opened the meeting, made a few remarks, and then turned it over to Jack. The disc jockeys wanted to know whether they were still employed. Jack assured them that their contracts would be honored. One disc jockey wanted a written contract. Jack told him that he did not need one, but if he wanted a written contract, the disc jockey could have it.

35. Contests Conceived by Jack. As noted above, it was hoped that permission to operate with 50 kilowatts power would be received by August 1 and that simultaneously with operation at the increased power the programing format of KRLA would change from country and western to Top Forty music and news. Jack told Wheatley that the

target date had been changed to September 1.^{16/} On August 26, 1959, the Commission denied the station's request for program test authorization. Therefore, a new target date of September 2, 1959, was set for the Top Forty format. On August 31, 1959, the station received permission for program test authorization and at 6 a.m., September 3, 1959, the regular programming of the new Top Forty format began.

36. During this period of uncertainty as to when KRLA would receive program test authorization, Jack conceived the idea of a contest as a "sustaining action" pending receipt of the authorization. The contest would relieve the embarrassment of KRLA in failing to operate at 50 kilowatts at an earlier date. Jack's idea revolved around a Golden Key which would theoretically unlock the new transmitter for KRLA's 50-kilowatt operation. Wheatley was told by Jack that a key would be hidden, that KRLA would broadcast clues to its location, and that when the key was found a money prize would be awarded. At the beginning of the contest, the prize was to be \$50,000; as the clues got easier, the prize was to be reduced (each clue was assigned a prize value). The minimum prize was to be \$2000, but Jack later determined that \$5000 would be the minimum. The contest began on August 30, 1959, and ended on September 7, 1959.

^{16/} Technical problems compelled the change.

37. Beginning at midnight September 1, 1959, on a 24-hour basis until 6 a.m., September 3, KRLA continuously broadcast contest clues. The logs of KRLA reflect that this programming which is listed as "Talk" consisted solely of clues to the location of the Golden Key, with the exception that twice during each quarter hour the clues were interrupted at approximately 4 or 5 minute intervals by a telephone contest in which names of Los Angeles residents were picked from the telephone book at random and they were asked to call the station within a stipulated time

in order to win a money prize; and 2) by another telephone prize contest "Don't Say Hello, Say KRLA." Each of these subsidiary contests was broadcast for approximately 1 minute.

38. At 6 a.m., September 3, 1959, KRLA's program logs reflect it began broadcasting its regular popular music programming format. This programming consisted of a disc jockey show which had included within each one-quarter hour two contest promotions. One of the contests, as described above, involved calling names at random from Los Angeles telephone books. The other was the Golden Key contest. The program logs show this programming continued at least through September 4, 1959.

39. The clues to the Golden Key contest were written at Jack's direction by Wheatley and a friend of Jack's named Frank Loy. Jack buried the key initially on August 29, 1959, but he did not tell Wheatley where the key was hidden. Wheatley thereafter wrote, without any knowledge of the hiding place, at least twenty contest clues which were broadcast over KRLA. He submitted these clues to Jack before their broadcast. Jack testified that "it's the closest thing to being impossible" that the key could have been found from listening to Wheatley's clues broadcast from August 30 to September 3.

40. The key was not found where it had been hidden on August 29, 1959. Jack's friend Frank Loy, on September 3, 1959, hid the key at the Marineland resort, and it was not until September 4 or 5 that Loy, at Jack's direction, told Wheatley where the key was buried. The original clues, written by Wheatley when he had no knowledge of where the key was hidden, were broadcast over KRLA until the morning of September 7.

41. After Wheatley was told that the key had been hidden at Marineland, but before September 7, Jack told Wheatley that the key had to be found on September 7. Jack wanted the key found then because it was Labor Day and thousands of people would be at Marineland, a popular recreation spot. Jack directed Wheatley to write clues

so leading that it would be obvious where the key was hidden. After receiving these instructions, Wheatley devised clues which were broadcast on KRLA for the first time on the morning of September 7, 1959. He wrote the clues from information supplied to him by Loy at the time he was told of the hiding place. They definitely pointed to the key's location. At about 2:30 p.m. on September 7 Jack told Wheatley that

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although Jack had originally determined that the prize was to decrease to \$2000, he had decided (as above indicated) that when \$5000 was reached the prize would go no lower. Mrs. Patricia Beers, a KRLA listener, found the key on September 7, 1959, and she received the \$5000 at the studios to the accompaniment of promotional pictures.

42. Although Jack had no authority to sign checks on behalf of Eleven Ten, he co-signed two such checks. He co-signed the \$5000 check dated September 7, 1959, awarded to the finder of the Golden Key contest, and a \$200 check dated September 12, 1959. Jack could not recall the purpose of the \$200 check, which was payable to Cash. Both checks were co-signed by Edwin V. Schulz, General Manager. Don testified that he never authorized Jack to sign checks on behalf of Eleven Ten. The voucher copy of the \$5000 and \$200 checks which Jack signed on behalf of Eleven Ten have had Jack's signature erased from the vouchers, but both Don and Jack testified that neither one had ordered these erasures, and their origin is a mystery in this record.

43. Perry Allen Contest. The tape of another disc jockey, Perry Allen, who was then employed by Station WKBW, Buffalo, New York, was heard by Don on the evening of August 20, 1959, and also by Jack then or a few days later.^{17/} Allen, to get a job at KRLA, had sent a tape of his voice to Wheatley some time before August 20, 1959. Wheatley telegraphed Allen that his tape indicated he would be unsuitable

for KRLA, his delivery being "too frantic." During the last week of August Jack called Allen in Buffalo and offered him the job of disc jockey during the 6 to 9 a. m. period.^{18/} Jack told Allen that he would be needed for the kick-off of KRLA's Top Forty format. Allen stated that he would try to be at KRLA for the kick-off, but that he was under a contract to WKBW, which called for a notice of termination. Allen could not accept employment until he spoke to the management of WKBW about his existing contract. Jack told Allen to call him after he had spoken to the management of the station.

44. Following Allen's conversation with Jack, he spoke to the WKBW management, who contended that the station could not release him from his contract until it found a replacement. Allen then called Jack and told him of WKBW's position. Jack told Allen to try and find a replacement, and offered to reimburse Allen for any liability he might incur in leaving Buffalo without WKBW's consent.

^{17/} Don had already heard Perry Allen over WKBW.

^{18/} Jack testified that he told Allen that "Donald had tried to reach him, that he had been unable to, that I was acting in Donald's behalf at KXLA, that the new tape was in [a Perry Allen tape other than the 'too frantic' tape mentioned above], and that we would like to have him join the staff of KXLA in the very important, if not the most important time slot in any radio station, the 6:00 to 9:00 a.m. period."

45. Allen, at Jack's suggestion, spoke to a lawyer in Buffalo who advised him that the contract he had with WKBW was binding; and when Allen again asked WKBW for an early release, the licensee of WKBW threatening to institute injunction proceedings against Allen if he left without his permission. On or about August 30, Allen's wife told Jack that Allen could not be in Los Angeles for the kick-off and Jack asked her the earliest date he could arrive in Los Angeles. She then estimated a date two weeks ahead, that is, September 12, 1959, when Allen could leave WKBW with the permission of the management.

Later that day Jack called Allen and told him that they had a definite agreement that Allen would come to Los Angeles September 12, 1959, and that since Allen could not be at KRLA for the kick-off of the new format, it would be necessary to have a promotional contest centering around him.

46. The next day, August 31, Jack called Allen in Buffalo to give him instructions regarding the promotional contest he had mentioned to Allen the previous day. Allen first outlined a contest idea which Jack rejected immediately over the telephone.^{19/} Jack then described to Allen the "Find Perry Allen Contest." Listeners were invited to walk up to a person and ask, "Are you Perry Allen, the latest member of KRLA, Eleven Ten." Clues would be broadcast each day. The first person to locate Perry Allen would get the prize. The prize would start at \$10,000, and each day it would be decreased by \$1000 until Allen reached Los Angeles, when the prize would have decreased to \$1000 and the clues would be very easy. Jack told Allen to prepare tapes to be sent to KRLA which were designed in Jack's own words to

" . . . get everyone, if it were possible, in Los Angeles accosting every little man in Los Angeles with the statement, KRLA, Eleven Ten."

47. Jack asked Allen if he had any particular characteristics that would be noticeable in a crowd. Allen told him that he was short, that he wore a bow tie frequently, and a grey suit. Jack directed Allen to tape 12 announcements per day for 10 days with something like the following example:

^{19/} The idea involved a contest which would require the listener to guess the distance Allen would travel each day en route to California, identify his hotel, and so on. Jack rejected the contest idea as impracticable because Allen "would have to come by some strange means of transportation in order to take two weeks to get from Buffalo to Los Angeles."

"Look for the guy in the bow tie . . . in the Los Angeles restaurant, and if you walk up to the right person and ask [the correct] question . . . you'll win the money."^{20/}

From Jack's instructions, Allen wrote a "fact sheet" which he read back to Jack to make sure he had the instructions correct regarding the contents of the tapes, and from this fact sheet, Allen recorded the tapes which he mailed to KRLA. A day or two later Jack telephoned Allen to tell him the content of the tapes was fine, but that they were too long, and he asked Allen to shorten them. Allen did so. Jack then arranged for the tapes to be broadcast over KRLA.

48. Jack called a meeting of the KRLA staff before the first broadcast of Allen's tapes; the Allen contest was discussed. Don Cole, a KRLA disc jockey during the period under discussion,^{21/} at a staff meeting, testified that he informed Jack that he objected to the form of the contest because Allen was not in Los Angeles, and that he told Jack that if anybody discovered Allen was not in Los Angeles, "we would be in trouble." In substance, he testified, Jack replied, "Don't you worry about it, I'll take care of it"^{22/} Jack told the disc jockeys the hours they would be broadcasting, how many of the Top Forty records would be used in the programing, and he explained the Perry Allen contest. One of the disc jockeys, Frank Pollack, during the meeting, told Jack that Purcell and Blore of Station KFWB, Los Angeles, knew where Allen was, though Pollack didn't say where. Jack replied that no one knew where Allen was except himself (Jack) and a few others.^{23/}

49. Jack directed the disc jockeys to broadcast extemporaneous live announcement "tags" to Allen's tapes. Jack was asked the question: "Did you advise the announcers who handled the Perry Allen show for the first two days that they were to ad lib along with the tape and instruct them to say:

'Go out into the streets of Los Angeles, look in restaurants or in ball parks for Perry Allen' and to generally give the impression that Perry Allen was located in Los Angeles."

Jack answered this question: "I suppose I did."

20/ Jack testified "he can't honestly" say whether he directed Allen in the tapes to " . . . announce that he was to be searched or looked for in Los Angeles, in Los Angeles restaurants or at the ball park," but "[he] may have."

21/ Cole left KRLA on October 4, 1960, having "refused to sign a contract for another year of employment with KRLA, another year of employment, because of this pending hearing"

22/ Jack, however, testified he did not recall that anyone objected to the Perry Allen contest because it was known Allen was in Buffalo.

23/ Jack, however, testified he did not recall a member of the staff's saying that Purcell and Blore, of Station KFWB, knew of Allen's whereabouts.

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50. On the morning of September 3, Cecil (Hal) Goodwin, then a disc jockey employed by Eleven Ten (his employment was terminated on September 11, 1959), broadcast over KRLA some of the tapes Allen had recorded. In addition, as directed by Jack, he amplified these tapes by saying in substance, "Go out on the streets . . ." and look for Allen.

51. On the morning of September 4, Don Cole (at ' Jack's suggestion or appeal") broadcast over KRLA some of the tapes Allen had recorded. Jack heard the tapes broadcast "which led [him] to believe that Perry Allen might be in Los Angeles."

52. Allen was "found" on September 4 (the second day of the contest) in Buffalo by two employees of the corporate licensee of KFWB, Los Angeles.^{24/} After extended negotiations, about October 26, 1959, \$10,000 was paid to Purcell (one of the finders) on behalf of Station KFWB, as the prize for finding Allen.

53. In connection with the "Perry Allen" contest, KRLA ran two other promotions from September 3 to September 12, 1959. A prize was awarded to the listener who guessed the exact time Allen spoke his first words over KRLA. The second promotion was one that KRLA arranged for Allen's arrival at the Los Angeles airport (on September 12). Allen was directed to sell dollar bills there for fifty cents; while he was selling the bills, other station personnel were doing the same thing.

54. Jack left KRLA on September 14, 1959, but returned on September 21, 1959, for about an hour, to introduce Herbert Heiman to the staff of KRLA. Jack had hired Heiman as production director, or manager, after discussion with Don. Jack left Los Angeles on September 21, 1959, and did not return until a few days before November 2, 1960 (just before the present hearing on the renewal of KRLA's license).^{25/}

55. Loans From Broadcast Equipment To Eleven Ten. Some time during August 1959, Don told Jack that KRLA needed more money. Jack agreed that Broadcast Equipment would lend \$50,000 to Eleven Ten. He agreed to make the loan since he already had a large investment in Broadcast Equipment and he felt it necessary to protect that investment. Also, he wanted to help Don. Don had mortgaged everything he owned to form Eleven Ten.

^{24/} After being tapped in Buffalo, Allen put in a call for Wheatley in Los Angeles but could not reach him, and then called Jack Cooke, who invited the winners to come to Los Angeles so that the promotional value of the contest could be exploited (one of the winners told Jack he was from a St. Paul radio station).

^{25/} Since the acquisition of KRLA by Eleven Ten, Jack had been in Los Angeles for the following periods: April 20-May 13, 1959; July 6-23, 1959; August 19-September 26, 1959 (and, in addition, during the hearing period).

and did not have the additional funds needed for the operation of KRLA; and he could not borrow money from any source other than Jack. It later became necessary for Jack to lend additional money to Don. These later loans were required because " . . . Don had reached a point really of no return. It was almost essential to continue to help him."

56. As of September 30, 1960, Eleven Ten owed Broadcast Equipment \$375,000 on the principal of the money lent to Eleven Ten, and \$13,429 in interest on the loans. The loans were unsecured and are evidenced by demand notes at 5-1/2 percent interest. At least one of these notes, that of October 22, 1959, was prepared by Schulz at Don's direction. The rent due under the lease between Eleven Ten and Broadcast Equipment up to September 30, 1960 (17 months from the assignment on May 1, 1959) was \$127,500. Of this amount Eleven Ten has only paid \$4,167 to Broadcast Equipment. The remainder of the rent, totaling \$123,333, was still owing on that date. The grand total of money owed by Eleven Ten to Broadcast Equipment as of September 30, 1960, is \$511,762. As noted above, Eleven Ten has borrowed \$100,000 from Empire Trust on a loan which Don personally guaranteed. As of September 30, 1960, Eleven Ten had paid \$50,000 on the principal and \$5,972 interest (5%) on this note. Part of the funds borrowed by Eleven Ten from Broadcast Equipment were used to make all the payments on the principal and interest due on this loan.

57. Relationship Of Eleven Ten And Broadcast Equipment Under Lease Agreement. The lease agreement states:

"Eleven Ten is fully aware of the conditions of the Leased Premises. Broadcast Equipment makes no warranty or representation, either express or implied, as to the fitness, design, or condition of, or as to the quality of the material, equipment, or workmanship in the Leased Premises except that Broadcast Equipment does warrant that it will at its own cost and expense install any and all equipment and facilities necessary to

enable [Eleven Ten] to operate with a power of 50 kilowatts in accordance with its authority from the Federal Communications Commission."

There is no provision in the lease for any increase in rent because of additional expenditures by Broadcast Equipment.

58. Broadcast Equipment has purchased and depreciates studio equipment for KRLA valued at \$4,492. Eleven Ten has purchased and depreciates studio equipment valued at \$3719. Fry, Eleven Ten's accountant, receives instructions from Jack and Don as to whether equipment purchased is to be owned by Broadcast Equipment or Eleven Ten. Depreciation on an asset is taken by the corporation which carries the asset on its books. Jack Reeder, chief engineer of KRLA, authorized the purchase of the studio equipment bought by Broadcast Equipment for KRLA. Fry sent the invoice to Canada and a check was prepared there for the purchase price.

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59. Don read the assignment and lease agreement between Eleven Ten and Broadcast Equipment many times. It is his understanding that Eleven Ten may require Broadcast Equipment to furnish additional funds for equipment and studios, beyond the amount which had been necessary to complete construction and place KRLA's 50 kw operation on the air. For example, should KRLA receive permission to move its studios from Pasadena to Los Angeles, Broadcast Equipment must furnish and pay for all equipment, including costs of installation. The basis for his belief is the fact that Broadcast Equipment owns and controls all physical assets. Don testified:

"This is the original arrangement made between Eleven Ten and Broadcast Equipment that, when and if Jack Cooke became an American citizen, he would have the rights to purchase Eleven Ten Broadcasting."

Jack, however, insists that there are no understandings between him and Don with respect to the ownership or operation of KRLA, or to future interest in the property, not disclosed to the Commission.

60. Programing Representations Made In Assignment Application. In the assignment application filed with the Commission, Eleven Ten submitted a policy statement regarding its proposed programing. It stated:

"The applicant proposes to schedule on KXLA, Pasadena, California a program of popular music, news on the hour, and news headlines on the half-hour, with sportscasts at peak periods of male listening. The program emphasizing music, news and sports will be produced to appeal to the largest possible cross-section of audience in the station's area."

Surveys will be conducted regularly in an attempt to determine the changing likes and dislikes of the listeners of the area. KXLA will keep abreast of the results of these surveys by programing accordingly.

In the field of public service, KXLA proposes to broadcast polished and attractive performances by teachers, educators and proponents of culture. In order to do so, KXLA proposes to train and coach speakers, where necessary, to present talks with an aura of professionalism and showmanship.

Free time on the station, and, again, the help and assistance of the station's staff will enhance the programs broadcast by religious and civic service organizations.

MUSIC:

Recorded and transcribed popular music will constitute the majority of the music broadcast by KXLA. Records and transcriptions will be chosen by the station's library staff to present a well-balanced schedule of the music of yesterday, today and tomorrow.

NEWS:

The News Department's chief functions will be twofold: (1) the rewriting and editing of teletype news; (2) the gathering and processing of local news. By highlighting local facets of the news and selecting and rewriting items of national news with a desirable local impact, the applicant further plans to fulfill a need of listeners of the area.

RELIGION:

KXLA will not accept sponsored religious programs. Religious programs normally will be confined to the period 6 AM to 12 noon Sundays, with the exception of a daily inspirational message broadcast early in the morning. A religious service of a different denomination (in rotation) will be broadcast each Sunday, thus giving every religion an opportunity to communicate with the public served by the station.

AGRICULTURE:

KXLA serves a farm area, second in importance only to the industrial strength of the region. With this in mind, the station will schedule one hour program each week calculated to satisfy the needs and the entertainment more of the farm audience. Bulletins highlighting farm market prices, weather conditions of interest to the farmers - such as storm and frost warnings - will be broadcast on every newscast twenty-four times a day.

EDUCATION:

The applicant proposes to offer to educators, scientists and professional men, not only the physical facilities of the station, but the talents of the program personnel of the station to assist these men to present their talks in a manner best calculated to attract listeners. It has been the

experience of the applicant that radio stations frequently provide their facilities to speakers, but fail to help these people to a practical understanding and proper use of the broadcast medium. KXLA will schedule at 10:45 PM, nightly, the program, "Town Hall", on which exponents of culture, science, technology, etc. will speak.

We believe these programs will be of sufficient general interest to the public to cause stations in other areas to schedule them. KXLA will offer to these other stations tapes of the programs so that they too may broadcast them.

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COMMUNITY SERVICE:

KXLA plans to schedule each night at 10:40 PM, Monday thru Saturday, the program "Town Crier" in which will be broadcast announcements and information highlighting the events of the community: charity, hospital, church and civic organizations. The station will not only offer its facilities to these civic groups, but will develop and broadcast information of their activities which the station believes will be of general interest to the public. (Assignment Application)

Don testified he intended to carry out all the representations set forth above.

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61. The policy statement on religion was proposed by Don and was his "most specific contribution." Don felt KRLA ". . . had to do a great deal of public service, we had to cut out commercial religion, and we had to do an all-around community job." KRLA proposed to broadcast religious programming on Sunday from 6:05-6:30 a.m., 6:31-7:00, 7:05-7:30, 8:05-8:30, 9:05-9:30, 10:05-10:30, and church services from 11:05-12:00 noon.

62. Don was responsible for a proposed program entitled Town Crier, which was to be broadcast nightly at 10:40, and one called Town Hall at 10:45. The former was to be a community calendar and the latter was to be a Discussion program.

63. The percentage of time proposed to be devoted to the various program categories was as follows:

		<u>%</u>
Entertainment	-	82.7
Religious	-	2.1
Agriculture	-	1.0
Education	-	1.9
News	-	10.0
Discussion	-	.3
Talks	-	2.0

64. Eleven Ten's Programing Policy and Programing Prior to January 1960. As stated above, the assignment application was granted on March 25, 1959, and Eleven Ten assumed operation of KRLA on May 1, 1959. The application for renewal of KRLA's license was filed with the Commission on September 2, 1959. Since the programing analysis covered only the period the station was operated by Pacific, the Commission directed Eleven Ten by letter dated October 28, 1959, to submit a revised program analysis for the period October 18 through 24, 1959, inclusive, and the logs for each date. By amendment to its renewal application submitted November 12, 1959, Eleven Ten represented that for the week of October 18-24, 1959, the percentage of time devoted to the following categories was:

		<u>%</u>
Entertainment	-	87.25
Religious	-	.16 <u>26/</u>
Agricultural	-	.69 <u>26/</u>
Educational	-	.00

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		<u>%</u>
News	-	8.20
Discussion	-	.00
Talks	-	3.70

26/ See below.

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65. By August 14, 1959, the date the renewal application was executed, Wheatley had taken no steps looking toward broadcasting any religious or educational programs. Wheatley never received any "specific" instructions to prepare such programing to coincide with the commencement of the new Top Forty format.^{27/}

66. The programing for the week of October 18-24, 1959 and the programing proposed to be broadcast by KRLA represents a departure by Eleven Ten from the programing promises in its assignment application. In the amendment, for the first time Eleven Ten said, "It is the opinion of the licensee that under present day circumstances radio is most effective when its messages are reduced to timely and repetitive announcements. The experience of KRLA during the short time that it has operated under its present ownership has proved the effectiveness of this technique." In a memorandum from Schulz to the employees of Donald Cooke, Inc., dated October 15, 1959, which is set forth below, Schulz said that KRLA was the only Los Angeles radio station which could offer advertisers complete personality programing (disc jockey) all day Sunday in addition to the other six days, uninterrupted by commercial religion. In the renewal application filed November 12, 1959, it was stated: "The basic ingredient of the proposed programing of KRLA is music . . . Management has evolved its basic format which should remain substantially the same throughout the coming license period" (emphasis not supplied).

67. On October 2, 1959, Don had sent an office memorandum to Heiman with a copy to Schulz.^{28/} It read:

"To Herb Heiman From D. R. Cooke Copy to Ed Schulz

"SUBJECT:

"When I made up the program schedule which was submitted to the FCC and approved by them, I included a farm report on each newscast. I regret now that I did so. However, Pierson, Ball and Dowd urged that KRLA increase its amount of agricultural programing. Thus, the reason for the inclusion of the farm report.

^{27/} Wheatley was asked whether he had received any "instructions," and replied that he had received "no such specific instructions". The implications of this discrepancy between question and answer were not explored on the record.

^{28/} Heiman, as previously noted, had been hired on September 21, 1959 as a production director or manager.

"Naturally, we don't want the usual 'hay seed' type of report inserted in our newscasts. However, surely there are means of getting around the strictly rural or 'hay seed' type of information.

"For instance, could we broadcast the prices of:

Avocadoes

Oranges

Lemons

"This information can be obtained from the Sunkist Fruit Exchange in Los Angeles. I believe they issue a daily citrus report.

Wheat prices

Corn prices

Barley prices

as quoted on the Chicago Grain Market.

"Available also, I am given to understand, are the prices on cattle, as quoted on the Oklahoma and Los Angeles Cattle Markets.

"Ed Schulz has an idea that the farm market reports can be incorporated in our schedule in the form of 'tips to housewives'. I don't see how this would help KRLA conform to its proposed broadcast schedule. I think that a 30 second farm market report on certain specific newscasts (certainly not on the 24 newscasts a day) would fill the bill.

"Herb, please give your serious attention to this. I am not anxious to run afoul of the FCC.

"By now, you have undoubtedly received a copy of the program schedule which we submitted to the FCC. You will note that KRLA intends to:

- 1) Set up a series of religious programs
and
- 2) Set up a series of public service talks
in the late evening

"Treating first with No. 2, perhaps the use of a public service announcement in a quarter hour, say from 10:30 - 10:45 p.m. nightly, will satisfy the FCC.

"Ed Schulz tells me that a public announcement in this period without any commercial announcements being included in the period designates the entire 15 minutes as public service. If this is so, are both of you fellows satisfied that we should not have to put a 15 minute talk in?

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"I understand that the Smog Research Division of UCLA is prepared to give us material for one minute spot announcements which could be used in such a period and which would result in the 15 minute period being classified as public service. As I recall it, Dr. Hagen Smith is the professor or researcher in charge of the smog program and Mr. Jim Miller is the public relations counselor for that part of the university.

"As to the series of religious programs, nothing would please me more than to remove the necessity of broadcasting a round table of churches in the 11:00 AM to 12:00 noon period Sundays. If both of you fellows

feel that we should have a religious program on the air and, whether we want a religious program on the air or not, we must broadcast one in order to conform with our promise to the FCC, why not put it on between 6:00 and 7:00 AM Sunday mornings? Would this pass muster? You will also note that KRLA has undertaken to broadcast a 30 second or 60 second message of religious good cheer each morning at 5:59 AM. My thought originally was to invite each clergyman in the Los Angeles area to prepare a 30 or 45 second inspirational message. If we had a back log of 50-100 inspirational messages, they would not wear out their welcome too soon.

"I am anxious to get your reaction to this memo.

Yours very truly

Sgd/ Don

DC:dmc" (Emphasis not supplied).

68. Prior to the above memorandum's introduction into evidence, Don had testified that the religious programing he had proposed in the assignment application is the kind of programing that identifies a radio station with the community it serves. In explanation of the statement in the memorandum regarding religious programs (next to last paragraph) Don testified:

" . . . We had lost a great deal of money at KRLA. Ed Schulz was involved in the losses as general manager, and I asked him for the simple reason I felt that perhaps the 11:00 to 12:00 noon period Sundays could be sold commercially for at least the time being to get us out of this terrible loss position."

Schulz replied to Don's memorandum, saying that with regard to the agricultural programing KRLA would insert a 40 second market roundup in the 5:55 and 11:55 AM newscasts. In addition, Schulz planned to broadcast two 2-minute "featurettes" a day, directed to housewives, explaining the "best Buy" in produce. Schulz informed Don that this programing would

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satisfy KRLA's obligations insofar as agriculture was concerned. In the assignment application, Eleven Ten had promised to broadcast a 1-hour program each week designed for a farm audience, not for a housewife audience. In addition, Eleven Ten promised to broadcast information such as farm market prices and weather conditions of interest to farmers on every newscast 24 times a day.

69. In response to Don's query about quarter-hour "public service" segments, Schulz under date of October 5, 1959, replied that KRLA would insert one single minute "public service" spot announcement in a sustaining quarter-hour. The remaining 14 minutes would consist of the playing of the Top Forty tunes, and KRLA would log the entire 15 minutes as public service programming. Schulz informed Don, "we do not have to fill the entire 15 minutes with gab" (emphasis not supplied).

70. Heiman replied on October 4, 1960 to Don's memorandum, stating, among other things, "We are incorporating thirty seconds of a morning newscast to a Farm Fair . . . of interest mainly to the consumer rather than the farmer."

71. Schulz addressed a memorandum dated October 15, 1959, to the employees of Donald Cooke, Inc., the sales representation organization, which sold advertising time for KRLA. As stated above, Don and Jack are both 50% shareholders in this corporation. The memorandum stated, in part:

"SCHEDULING: Here is an important fact. . .

KRLA Radio is the ONLY LOS ANGELES STATION
to block program its personalities in the same time
slot SEVEN DAYS A WEEK: Yep . . . that's right . . .
only on KRLA can you hear each and every personality
at his regular time ON SUNDAY TOO: This unique
programming schedule has been arranged at GREAT
EXPENSE to the management. ***

"SUNDAY RADIO: You might ask yourself why we have gone to trouble of duplicating our Monday through Saturday schedule on Sunday . . . something very few stations do. Well, in Los Angeles . . . SUNDAY IS A BIG RADIO DAY. Yes, there is a city on wheels the size of Detroit every Sunday from 9 AM to 11 PM in metropolitan Los Angeles. KRLA's listeners are on the go everywhere, in their cars, at the beach, with their portables, fishing to the lakes or ocean. Remind your clients too . . . when they call for a Monday through Saturday schedule to ADD MORE SPOTS to cover that all important SUNDAY RADIO AUDIENCE IN L. A.! And ONLY KRLA can offer complete personality programing all day Sunday uninterrupted by commercial religion."

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72. Don testified that the duplication of KRLA's Monday through Saturday programing on Sunday took place with his approval. He said:

"At this time, because sales had been so bad, I was almost willing to do anything to get the sales on the radio station, and if [the duplication of the Monday through Saturday programing on Sunday] would help, I would go along until we got to the point where we didn't have to borrow or suffer these terrible losses."

However, after testifying that the duplication of programing was designed to recoup KRLA's losses, Don later stated that the memorandum meant that KRLA's ratings would improve by carrying a 7-day Top Forty music format and that the purpose of the memorandum was not "particularly" to get more advertising revenue on KRLA.

73. Don came to Los Angeles on November 9, 1959, to improve KRLA's advertising revenue since the station was losing money, and he remained until November 20, 1959. In addition, he testified, he felt that the "public service programing" of KRLA ought to begin. At this time, insofar as "public service programing" was concerned, KRLA had a 40-second market roundup in the 5:55 and 11:55 newscasts, and two 2-minute featurettes, as noted above, were directed to housewives, but they were classified as agricultural.

74. Commission's Section 309(b) Letter. On December 16, 1959, the Commission addressed a Section 309(b) letter to Eleven Ten. The letter stated, in part:

"It appears from a review of the above documents and other pertinent information contained in the Commission's file on Station KRLA that you are not operating your station in accordance with the programing proposals made by you and considered by the Commission in connection with its approval of the assignment of license (BAPL-171) earlier this year. Additionally, a question exists as to whether you intended to carry out the representations made in your Statement of Program Service submitted with that application.

"A review of the logs submitted by you for the week of October 18 to October 24, 1959 (as requested by the Commission's letter of October 28, 1959) indicates that you may have falsified the program logs for each of the seven days mentioned above by the addition of certain religious programing to the entries of other programs actually broadcast on those dates.

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"You were advised in the Commission's letter of October 28, 1959 that information had been brought to the attention of the Commission which indicates that on September 4, 1959, Station

KRLA broadcast announcements by Perry Allen -- or someone purporting to be Perry Allen -- which stated that the listeners should look for Allen in a Los Angeles restaurant and 'identify' him so as to win \$9,000. You admit that on the date in question Allen was actually still working for a station in Buffalo, New York. A question is raised as to whether your conduct of this contest constitutes an improper use of your facilities inimical to the public interest.

* * *

"An inquiry conducted by the Commission indicates that Jack K. Cooke, a Canadian citizen, inaugurated the present programing format utilized by Station KRLA; that Jack K. Cooke has changed his residence to the Los Angeles area and is active in the day-to-day management of the station; that at the conclusion of the 'Find Perry Allen' contest mentioned above, the 'finder' telephoned KRLA and was referred to Jack K. Cooke who advised him to fly to Los Angeles with Allen 'for a big publicity splash'; and that disagreements, arising out of Jack K. Cooke's participation in station operations, existed between him and certain station staff members in matters of the station policy and management. It appears that these activities constitute actual control of the station, by Jack K. Cooke, contrary both to the provisions of Section 310 of the Communications Act, and to the representations by Donald R. Cooke with respect to the ownership and control of the station made in your assignment application (BAPL-171)."

The letter stated that a reply from Eleven Ten was required within thirty days.

75. Programing Steps Taken By Eleven Ten As A Result of Commission's 309(b) Letter. By letter-memorandum dated January 4, 1960, Don wrote Heiman ". . . I want very much to put our public service house in order, exacting order, well before January 15th. I say this because I hope to include my response to the FCC letter of December 16, a fulfillment of the promises of my FCC submission of November 20, 1958."^{29/} The memorandum is devoted to a recapitulation of the program representations made by Eleven Ten in its assignment application and its failure to fulfill these representations. Don instructed Heiman to initiate the programs proposed in the assignment application. More specifically,

^{29/} Don is referring to his programing representations made in the assignment application.

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Don instructed Heiman to schedule: (1) a church service from 11 to 11:55 a.m. each Sunday "beginning at once"; (2) "within twenty-four hours", a 1-hour weekly "farm audience program," as promised in the assignment application; (3) "beginning at once," 30 seconds of farm information on every newscast, 24 hours a day; (4) as soon as possible, preferably well before January 15, Town Hall at 10:45 p.m. nightly, as promised in the assignment application. Don also instructed Heiman that he would be expected to begin to produce the educational shows promised in the assignment application, only, however, after he had carried out the above instructions. Don told Heiman that in connection with Eleven Ten's "failure to broadcast these particular [Education] shows" he would "beg the indulgence of the Commission" and promise to have them on the air as soon as they could be produced.^{30/}

76. On January 8, 1960, in a "Progress Report" Heiman replied that he was ". . . proceeding posthaste on all [Don's] requests."

77. By letter dated January 13, 1960, Eleven Ten, asked for an extension until February 15, 1960, to reply to the Section 309(b) letter of December 16, 1959. The primary reason given for the requested extension of time was Don's desire to ". . . personally verify the information which will be submitted in response to the Commission's inquiry which he cannot do without spending an extended period in California." By letter dated January 15, 1960, the Commission extended the time for filing a reply until February 15, 1960.

30/ Don was referring to the following programs proposed to be broadcast on Sunday: 7:30 to 8 a.m. -- Report on Education, 8:31 to 9 a.m. -- School Speaks, 10:31 to 11 a.m. -- Youth Talks.

78. The purpose for the one month extension was to obtain more time to enable Don to submit evidence that the programing proposed in the assignment application was, in fact, being broadcast over KRLA. He wanted the "full complement" of programs specified in the assignment application to be on the air by January 30, 1960, "at all costs." Don arrived in Los Angeles on January 22, 1960, and returned to New York on February 10. The main reason for this trip was ". . . to set up a so-called crash program, to get everyone of the public service features we have promised the FCC into effect on KRLA."

79. Eleven Ten's Response To Commission 309(b) Letter and Programing Amendment. On February 15, 1960, the Commission received Don's sworn response to the 309(b) letter of December 16, 1959. As part of his response he submitted an affidavit of Wheatley and an "affidavit" of Schulz. Schulz's "affidavit" was titled "Draft No. 1 - Revised No. 1." It responded in some degree to every question raised in the 309(b) letter. The notarization on Schulz's affidavit is dated February 8, and on February 9, 1960, he left the employ of Eleven Ten.^{31/} Don testified he has no explanation why the affidavit is entitled "Draft

No. 1 - Revised No. 1," nor does he know whether Schulz was told this document was to be only a draft and not an "affidavit."^{32/} Donald Fry, the accountant for Eleven Ten, notarized Schulz's "affidavit," but did not see Schulz sign the "affidavit," nor was Schulz present when the notarization took place.

80. As part of his response to the 309(b) letter, Don also submitted program information " . . . which reflects the manner in which the station is carrying out its original representations made to the Commission at the time it requested approval of the assignment." This information was furnished as an amendment to Eleven Ten's application for licensee renewal received on February 15, 1960. As part of the amendment KRLA submitted a new Part IV of the renewal application which included an analysis of the week of January 31, 1960 to February 6, 1960, prepared by Heiman. It specified the following breakdown:

^{31/} It is a matter of dispute, now pending before the California courts, whether Schulz resigned or was discharged. Don testified that "he resigned" (Tr. 894).

^{32/} Don first testified that he was present when Schulz's affidavit was prepared and signed. During cross-examination, however, Don stated he did not recall that he was present when Schulz signed the "affidavit."

	[952]	%
Entertainment	-	81.1
Religious	-	2.5
Agriculture	-	2.7
Education	-	2.0
News	-	8.9
Discussion	-	0.3
Talks	-	2.5

81. As part of the February 15, 1960 amendment there was an exhibit entitled "Agriculture in the News," which stated:

"Two newscasts a day will have the majority of their content devoted to farm news. They will be broadcast at 5:55 AM and 1:55 PM and will be 4 minutes, 30 seconds in length. This policy was initiated approximately in October 1959, with the 1:55 PM report given at 11:55 AM. The change to 1:55 PM took place the week of January 18, 1960. A complete agricultural weather forecast is included in each of these newscasts.

"Thirty seconds of agricultural news will be included in every newscast aired on KRLA. This policy was not strictly adhered to prior to January 8, 1960; however, it has been fulfilled from that date on. The content includes pertinent local and national news developments that would interest local farmers and livestock breeders in the south-land. Stock, grain and poultry exchange prices are quoted daily."

82. Though it was stated that there were 4 minutes and 30 seconds of newscasts "devoted to farm news," described as a policy initiated in October 1959, in a letter from Schulz to Don dated October 5, 1959, he wrote only that there would be broadcast over KRLA " . . . a 40-second market roundup in the 5:55 AM and 11:55 AM newscasts."

83. As noted above, it was stated that the policy of broadcasting 30 seconds of agricultural news on every newscast was not strictly adhered to prior to January 8, 1960. Don, however, had written Heiman and Schulz on October 2, 1959 that "I think a 30 second farm market report on certain specific newscasts (certainly not on the 24 newscasts a day) would fill the bill" (emphasis not supplied).

Heiman replied, "We are incorporating thirty seconds of a morning newscast to a Farm Fair . . . of interest mainly to the consumer rather than the farmer." Subsequently, on October 26, 1959, Heiman again

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wrote that agriculture news would be broadcast but twice a day.^{33/}

84. In the amendment submitted on February 15, 1960, under the category of agriculture, KRLA listed "Best Buy of the Day."

"Once per day, Monday through Friday, between 11:30 and 11:45 AM the show the Best Buy of the Day is aired. This sixty second presentation began October 15, 1959. Its purpose is to help Southland shoppers find what farm products arrive in Los Angeles in the greatest quantity and quality so they may better prepare their shopping list. This information is supplied by Mr. Cleveland of the Federal State Market News Service. It is proposed that shortly, with his cooperation, KRLA will air two four-minute, thirty second shows direct from the Produce Warehouse in Los Angeles."

This program, Haiman admitted, was not properly classified according to the Commission's definition as set forth in the application. The February 15, 1960 amendment also specified KRLA Farm Roundup as Agricultural. This program was described as follows:

"KRLA Farm Roundup:

"The KRLA Farm Roundup is a fifty minute program aired each Monday morning from 5:00 to 5:50 AM. It made its first appearance on Monday, January 11, 1960. The Farm Roundup is a show composed of live and transcribed agricultural information and recorded

music. The live portions include weather conditions and frost warnings; the latter specifically for each of the citrus crops. Complete weather forecasts for each of the agricultural districts are given by the announcer on duty. He also gives a weekend stock exchange roundup and pertinent local and national farm news. The transcribed portions include comment by:

"Dr. C. M. Hardin, President, American Association of Land-Grant Colleges and State Universities, and Chancellor University of Nebraska.

33/ For some unknown reason Eleven Ten referred to agricultural news as "Public Service."

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"Dr. J. W. Fitts, President, Soil Science Society of America, and Head, Department of Soils, North Carolina State College.

"Dr. G. F. Sprague, President, American Society of Agronomy, Research Agronomist, Agricultural Research Service, USDA.

"Carl E. Rose, President, National Association County Agricultural Agents in cooperation with the Farm Radio News Service and such persons as Edward Holter of the National Grange, Administrator Clarence Ferguson of the Federal Extension Service and Senator Eugene McCarthy of Minnesota plus many more in cooperation with the Farm Outlook for 1960."

The amendment was received by the Commission on February 15, 1960, and Farm Roundup was represented as having begun on January 11, 1960.

It is not clear from the record whether the transcribed portions were broadcast over KRLA directly before or after February 15, 1960.^{34/} Heiman never heard the program broadcast. Perry Allen was the disc jockey on duty in January and February on Monday from 5 to 6 a. m., when this program was carried, and Heiman instructed him to broadcast the transcriptions of the various persons whose names are set forth in the above quotation.

85. On several occasions Heiman gave Allen "discs, transcribed spots of varying length," and asked if he thought they would be usable on the air. Allen said he had read the amendment filed on February 15, 1960, which states the transcriptions were broadcast, and that he did not recall having broadcast any of the transcriptions mentioned in the previous paragraph.

86. Although Farm Roundup is classified as agricultural, a satisfactory showing was not made as to the time devoted to the broadcast of agricultural information, news, or weather. However, within a 15-minute segment of Farm Roundup, about 3 minutes of farm information was broadcast. The program contained "bits" of agricultural information which would not be broadcast during a normal disc jockey program.

87. On January 11, 1960, Don directed Heiman to ". . . obtain, in every instance, letters from all sources that will be of benefit to KRLA in the matter of public service, religion, education, etc."

^{34/} Allen had broadcast the program since January 11, 1960.

On January 13, 1960, in a letter to Schulz, Don wrote, "The importance of these local church services cannot be minimized since we expect the Ministers, Priests, and Rabbis, to send us warm letters of thanks and acknowledgement of the services rendered by KRLA." Twelve public witnesses testified, on behalf of Eleven Ten, to the excellent

service provided their organizations by KRLA. (Only three of the organizations these witnesses represented were contacted prior to the Commission's 309(b) letter of December 16, 1959.)

88. On April 6, 1960, Heiman's Progress Report to Don stated, in part:

"RELIGION AND PUBLIC SERVICE:

"We definitely must do something about Sunday. This involves moving our block of discussion and religion to the period 6:00 AM to 10:00 AM if at all possible. I will approach Con Robinson this week to investigate the possibilities of a delayed broadcast or, instead a broadcast of their evening service to free us from the 11:00 to 12:00 period for the summer. I propose the following schedule:

<u>PROGRAM</u>	<u>TIME PERIOD</u>
Sound of His Music	6:00 - 6:15
Rosary	6:15 - 6:30
Seminar	6:30 - 6:55
Religious News	6:55 - 7:00
Spirit of Today	7:00 - 7:30
Scope Unlimited	7:30 - 8:00
Lake Ave. Congregational Service (DB)	8:00 - 9:00
Mass	9:00 - 10:00
Perry Allen (etc)	10:00 - 12:00

"Would it be possible to put Scope Unlimited and either Seminar or Spirit of Today on hiatus for the Summer? How about California for the Summer? Due to the nature of the program, Topic Youth as we know it must be off for the Summer."

89. In explanation of this memorandum Heiman said "... I felt that when summer would be upon us that there would be a

tremendous amount of people going toward the beach and to resort areas. I felt that if we were not on their car radios by 10:00 in the morning that we would lose this portion of the audience for the rest of the day."

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90. Don, in a memorandum to Heiman, dated April 12, 1960, about 55 days after he had submitted a response to the 309(b) letter, stated:

"DONALD COOKE, INC.
Inter-Office Correspondence

"Herb Heiman
Pasadena, California

From: Don Cooke
New York

April 12, 1960

"Dear Herb:

"It was very good to talk with you on the phone today. There isn't any doubt that KRLA is the most talked-about station and will be the most listened-to station in Los Angeles.

"Just to confirm my feelings about the Sunday religious and public service programing, before doing anything, the following points should be answered in the affirmative:

1. Tommy Dowd should be consulted and should approve the move -
2. No move should be made until about a month after the FCC has approved KRLA's request for its license renewal.

"At that time, undoubtedly, we will be able to drop some of the present programing, but we will only do so with the full approval of Pierson, Ball and Dowd, of course.

"Looking forward to hearing the tape on KABL. Thanks,

Best regards

sgd/Don

DC:duc"

91. In explanation of this letter to Heiman, Don expected the FCC to renew KRLA's license before April 12, 1960, but that:

"The reason for the letter itself was we were coming into the summer months, and the schools, the public schools, the high schools and the

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colleges would no longer be in session, which would make it extremely difficult for us, if not impossible, to continue such shows as California, Topic Youth, and Seminar."

In this connection, the eight programs broadcast in the period on Sunday from 6 to 10 a.m., 6 were religious programs, and of the educational type programs, only Seminar was broadcast during this period.

92. Perry Allen Contest - Licensee's Investigation And Report to Commission. On October 28, 1959, the Commission asked KRLA to supply it with full details concerning the Perry Allen Contest. Don, in late October or November, directed Schulz to check thoroughly regarding the details of the matter. Schulz called a meeting of KRLA employees. Don Cole told Schulz, in substance, what is reflected in previous findings. In a sworn response dated November 10, 1959, Schulz replied on behalf of KRLA. The letter said, in part, that "in late August Allen was hired and he was expected to report for work at KRLA by September 5." The letter further read:

"In order to promote Allen's arrival in Los Angeles and the start of his new program on KRLA Radio, we began a 'Find Perry Allen' contest on KRLA Radio the afternoon of September 3. It was our intention to bring Allen across the country, making occasional stops en route, and have Allen make beeper telephone reports as to the progress of his trip across the country, at the

same time giving 'clues' as to his whereabouts, and clues as to the time and place of his arrival in Los Angeles."

* * * * *

"We must state categorically that the 'Find Perry Allen' contest on KRLA Radio was a legitimate, bona fide radio promotion contest produced on the air to publicize the Perry Allen show on KRLA Radio to listeners in our coverage area."

* * * * *

"In regard to the paragraph in the Commission's letter concerning an announcement promoting the contest which implied that Perry Allen was in Los Angeles when, in fact, he was still in Buffalo, this ad lib statement went beyond the fact sheet used in the contest."

* * * * *

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"It had been the intention of the station to broadcast specific clues as to Allen's whereabouts, but the contest did not last long enough to make this possible. * * *"

93. In Don's sworn response to the 309(b) letter he stated:

"Insofar as the Perry Allen promotion contest is concerned, I have made as complete an investigation as the circumstances permit. For the most part I uncovered little beyond that reported by Schulz in his response of November 10, 1959 . . . Whatever the reasons may be, I cannot affirm or deny that some of the announcements may have indicated that

Allen was at the time in Los Angeles, since the continuity is not available . . . To the best of my ability I have endeavored to furnish full and complete information [in this statement]."

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94. Around the date of the contest, Jack told Don that Allen could not report to KRLA until September 12, 1959. Nevertheless, Don said, he still authorized the contest, but the "details" were worked out by the programing department. Jack and Don discussed "the over-all philosophy" though not the details of the contest. By that, Jack meant that the Perry Allen contest was designed to stir up interest in KRLA's call letters, in its frequency, and in Allen's name. All Don knew of the Perry Allen contest was that he gave his permission that it be conducted. Don read about the contest in Broadcasting Magazine's issue of September 14, 1959.^{35/} Since Schulz was the general manager, Don checked with him to find out what had actually occurred. In a telephone conversation after the Broadcasting Magazine was published, Schulz told Don that it was an ad lib remark by one of the announcers that caused the "trouble." Don called upon Schulz for a full written report of the incident. He said he had a copy of Schulz's report. After Broadcast Bureau counsel requested that this report be made available, Don then testified that he did not ask Schulz to provide him with a written report at this time, and said he first asked Schulz for a written report at the end of October or in the beginning of November.

95. Soon after Don spoke to Schulz, he spoke to Jack, who told him that tapes of Allen's voice were made; that there were announcements throughout the day by all the disc jockeys; but that Jack could not recall that any of them had actually specified Allen "was anywhere but in Buffalo or at some other area." Jack did not inform Don, according to the latter's version, that he had issued instructions to the disc

jockeys to ad lib so as to indicate that Allen was in Los Angeles. Don claimed to have been informed by Jack that when the announcements began, Allen could not possibly have been in Los Angeles, for Allen was not to come there until September 12. Before submitting his response to the Commission's 309(b) letter, Don went to Los Angeles in January with counsel, as they "wanted to thoroughly check the accuracy of the story which Ed Schulz had told [them]." In conducting this investigation they met with Allen, who according to Don, told them that he had sent tapes to KRLA, but that the only part of the contents of the tapes that Allen could recall were that they said "Listen for Perry Allen." Allen recalled a meeting with counsel in which he was asked about the Perry Allen contest, but he could not recall whether Don had been present. Allen claims that his response to

^{35/} The article stated, in part, "On September 4, . . . KRLA aired this announcement: Go out on the streets of Los Angeles today. Take a hint; go to a Los Angeles restaurant, look for a guy in a bow tie and say 'KRLA 1110 L.A.' And if you say this to me, the newest member of KRLA's ever lovin' 1110 men, Perry Allen, you'll be richer by \$9,000 in cash. So go." The article further stated that the person who found Allen called KRLA and talked to Jack.

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counsel's question "was fundamentally along the lines" he testified to in this proceeding, but he could not "recall the specific statements that I made at that time."^{36/}

96. In Don's investigation, it is claimed he and counsel checked thoroughly. However, Don did not personally speak to Don Cole, although Cole was still employed at KRLA, nor did he speak to Goodwin, who had left the station; Don did not personally ascertain whether Goodwin was still available for questioning. Don did not know if Cole was questioned at this time by counsel; but Schulz told Don that during the investigation Schulz conducted at the end of October or in November, Schulz got all the disc jockeys together to ask them the circumstances

of the Perry Allen contest, and Don thought " . . . that . . . Cole would be in that meeting."

97. During this investigation Don did not ask Jack about the contest, although Don testified at the time of the Perry Allen contest Jack had complete charge of programing. Don claimed not to have questioned Jack because Schulz had handled the response with the trade press and "seemed to be the most knowledgeable person on the staff at the time." Don testified he did not know that the idea and details of the Allen contest were conceived by Jack. Although Jack told Don in advance he was going to run the Perry Allen contest in which \$10,000 could be given away, Jack did not say he had originated the idea of the Perry Allen contest.

98. With regard to Don's knowledge of contests broadcast over KRLA during Jack's tenure as "program director," he testified that he approved the "promotions and contests that might possibly take place, "(though he left the details to the program department)"; and that he allotted \$50,000 to the KRLA budget for these ventures. If the \$50,000 was not adequate, money was to be taken away from some other classifications and put into these promotional contests. In Don's words, "This is one of the most important items we had at the time."

99. Thoughts Or Words For The Day, Issue No. 3 program Log Alterations. In Don's response to the question raised in the 309(b) letter regarding the falsification of KRLA's logs, he referred to

^{36/} See footnote 13/ above. The Broadcast Bureau's proposed findings from which these are adapted, states that "Allen" did not recall that Don had been present. Actually, Allen testified:

"I recall the meeting with Mr. Dowd. I'm very unclear as to whether Mr. Cooke was present at that time. I just frankly don't remember. I do, however, remember the meeting with Mr. Dowd."

Obviously, Allen's testimony, if to be advanced as impeachment of Don's is even weaker than the Broadcast Bureau's version, for he did not recall that Don was present but whether he was, so that even his imperfect recollection is ambiguous.

Schulz's accompanying "affidavit" and stated he had no personal knowledge beyond what was contained in Schulz's statement. This issue in the designation order involves the question whether the words "Words for the Day" or "Thoughts for the Day" were added once on each of KRLA's logs for the week of October 18 to 24, 1959. The addition to the logs is listed as being two minutes in length and is classified as "Religion." Schulz, in his "affidavit" said the addition to the logs was "made to reflect what had actually taken place." Schulz's explanation was:

"The broadcast of 'Thought for the Day' as a regular feature commenced during the second week of October, 1959. Instructions were issued to the program department who carried out the instructions immediately by giving the necessary instructions to the announcers. Unfortunately the traffic department did not receive instructions to schedule these announcements on the program logs. When the analysis of the week of October 18-24 was completed it was noted that that analysis did not reflect any religious programming which we knew to be contrary to the actual facts. Pursuant to my instructions the notation with respect to 'Thought for the Day' was added to the program logs."

100. Don learned of the alleged addition to the logs after receiving the 309(b) letter which raised this question. He therefore went to Los Angeles with his counsel in January 1960, and questioned Schulz and Heiman thoroughly.^{37/} According to Don, he did not address his inquiries to Heiman, because Heiman was young, and he considered Schulz, as general manager, to be the responsible party. Schulz told him the programs had actually been broadcast, and since Schulz was the general manager, Don accepted his explanation. Heiman, though he knew Schulz's statements to be false, said nothing. Don testified to speaking to no other staff members about this matter; and that the

first time he had reason to doubt the truth of Schulz's affidavit was about three weeks before the hearing began, when he was so informed by Heiman.

101. In connection with this issue, Heiman testified that on the weekend of October 31, 1959, he, Schulz and others, worked together to compile a program analysis for the week of October 18 to 24, 1959, for submission to the Commission. According to Heiman. Schulz remarked that there was no religion in the program analysis, and none shown in the logs, and that Schulz said that there should be some. Heiman testified that Schulz said with a wink: "I did tell you, didn't I, Herb, to put a 'Word for the Day' or 'Thought for the Day' on the air beginning that week, did I not?" Heiman testified that his reply to Schulz was "Something to the effect: If you say so." Schulz in Heiman's presence requested a staff

^{37/} Heiman had become responsible for programing by October 18, 1959.

member to type in the logs, "Thought for the Day" or "Word for the Day." Heiman testified that to his knowledge as program director, this program was not broadcast during the week of October 18 through 24, 1959; and that it was not until the first week of November that Schulz even ordered him to buy the book containing the material to be used for this "program."

102. Heiman wrote the following statement which he gave to two members of the staff of the Commission:

"August 31, 1960

"The statement below is true to the best of my knowledge.

"On the weekend of October 30 and November 1st these people worked on gathering material for the FCC (logs of October 18, etc.). Ed Schulz, Mrs. Schulz, Janice Crosby, Elayne and Herb

Heiman. On the night of Sunday it was called to my attention by Ed that we had a zero percent in religion and that he had asked me to place in the studio a few weeks prior to that date, a book containing a message 'Thought for the Day.'

"I could not find the book or original note left in the studio. I showed Ed the note's carbon and it was decided by him to attempt to reflect that we had run a short religious message during the week of October 18th.

"Although the 'Word (thought) for the day' was placed in the log hurriedly - an accompanying note was not sent to clarify the intent of placing the addition on the log. This was simply overlooked because of the extreme haste brought on by the November 14th deadline.

"There was no intent to perpetrate fraud or commit an act illegally to my knowledge.

Herb Heiman

"It was the consensus of those at the meeting that the thought for the day must have been aired, however, I did not actually hear it on the air.

Herb Heiman

"Signed before me this 31 day of August, 1960.

Thomas B. Fitzpatrick
Lewis Cohen"

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Heiman did not disclose the truth to Don about the log incident sooner since during Schulz' tenure as general manager he felt the "responsibility of the details and facts were on Mr. Schulz' shoulders" and after Schulz left he "perhaps did not have enough moral conviction to confess, as it were, to my employer." He testified he had no intention of withholding the truth from his employer or counsel when "the time was right."

103. In response to the question whether Heiman considered it more important to give the true facts to the Government of the United States (through Messrs. Fitzpatrick and Cohen) or to his counsel,^{38/} Heiman replied "I intended, as I said, to be elusive to the representatives of the Federal Communications Commission."^{39/}

^{38/} Don first learned that the representations made by Schulz (that is, that the insertions were made to reflect programing actually carried on the air) were not correct about three weeks before the present hearing, when Heiman informed Mr. Dowd, KRLA's counsel, that the statement in the Schulz' affidavit was not entirely correct. Counsel then on his return to Washington immediately called the Broadcast Bureau and informed Bureau counsel that for the first time he had reason to believe that the affidavit which had been previously submitted to the Commission over the signature of Schulz, and a part of an Official Response filed on behalf of KRLA, was not true and correct. KRLA's counsel then related to Bureau counsel the substance of what was subsequently testified to by Heiman at the hearing.

^{39/} An investigator from the Commission visited the studios of KRLA. Before the visit, Schulz instructed Jacqueline Pressley, an employee of KRLA, to refuse to answer if she was asked if Jack was at the station or had been there. Schulz further instructed her that if she were asked if Jack stayed in Los Angeles, she was to answer that she did not know. Mrs. Pressley was asked by the investigator whether Jack had been at the station and pursuant to the instructions from Schulz, she did not answer.

CONCLUSIONS

1. Control Issue. Section 310 of the Communications Act of 1934, as amended, prohibits the holding of a radio station license by "Any alien or the representative of any alien," or "Any corporation of which any officer or director is an alien." The purpose of this statute "is to safeguard the United States from foreign influences in the field of radio, and it must be construed in the light of its purpose." Kansas City Broadcasting Corporation, Inc., 5 RR 1057, 1093; Noe v. FCC, 260 F. 2d 739, cert. den., 359 U. S. 924. While Jack Kent Cooke, who is a citizen of Canada and not of the United States, is neither an

officer nor director of the corporate applicant herein, Eleven Ten Broadcasting Corporation, this would, of course, not preclude the conclusion, if supported by the facts, that his participation in the affairs of the corporation violated Section 310 of the Communications Act, for the test is whether there was actual control. "Congress did not imply artificial tests of control," Rochester Telephone Corporation v. U. S., 307 U. S. 125, 145.

2. On the basis of the facts of record herein, it is determined that Donald Cooke, the controlling stockholder of record of Eleven Ten, had not surrendered his control thereof, and that Jack Kent Cooke did not, in fact, acquire or exercise such control contrary to the statute cited above. It is unnecessary to dwell unduly upon the dangerous tactic of setting up a lessor corporation (Broadcast Equipment Corporation) owned by Jack Kent Cooke, to hold the physical assets of the corporate applicant herein, for, beyond any question of brotherly affection, this gave him a strong financial interest to interfere in its affairs. The plan also offered him a formidable temptation to regard it as a temporary holding arrangement whereby Don would ostensibly operate the station, though really for Jack's benefit, until he became legally competent to take over in his own name. It is established that Jack had been intent on acquiring a radio property or properties in the United States, and that price was not a controlling factor because of his substantial resources. While it was to be bought in the name of Don, a man of limited means, Jack ultimately was to become licensee of any station to be acquired. In the case of KRLA, this was at first hoped to be achieved by means of an option running to Jack, to be exercised when and if he became an American citizen. The option, however, was canceled after it was questioned by the Commission. The supposition that the cancellation did not, however, change Jack's hopes, is reinforced by contemplation of the generosity of Broadcast Equipment Corporation, supra, the lessor, regarding KRLA's rental, especially while the licensee laid out substantial sums of money for

contest prizes; and it may be, despite Jack's claim that there is no understanding between him and his brother with reference to a future interest in KRLA not already disclosed to the Commission, that in his own mind, at least, he expects to take over the station when and if he can legally do so. However, the issue here must be decided on the basis of overt acts either

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pointing or not pointing to unlawful control, and not upon speculation as to a state of mind not manifested in operative acts.

3. It was implicit in Don's attempt to conduct the affairs of KRLA largely from across the continent, a practice which cannot be commended, that persons on the scene would perform acts ordinarily the function of an owner, and would apparently be in control. Nor can the applicant be heard to deny that Jack's activities in and about the station, particularly with regard to the promotion contests, would in the absence of existing brotherly and financial ties, have been resented and repudiated as those of an officious intermeddler. Nevertheless, the one dispositive fact cannot be found to emerge from the evidence, namely, that Don had relinquished ultimate control to Jack. Whether Don had "enlisted," as the applicant contends, the talents and experience of Jack to help him "bring order out of chaos and mediocrity," or Jack had drafted himself to protect his investment, is immaterial. In the discharge of his duties, Jack ostensibly must, upon this record, be held to have exercised authority similar to that which might have been vested in some other trusted employee charged principally with responsibility for the program department's operations. So far as programing was concerned, it was comparable to the authority given William J. Wheatley although, as noted in the findings of fact, Jack also performed duties which Wheatley had never assumed as program director. Wheatley continued in his position as program director, with his authority in abeyance during Jack's stay, and he reported to

him instead of to Schulz, the general manager. Wheatley, however, resigned on September 9, 1959, and Jack remained until Herb Heiman reported for duty as production manager or director on September 20, 1959, when Jack left the station. From that date on, he did not return to KRLA, and there is no evidence that he has since given orders or instructions to any employee or participated in the direction or control of the operations of the station in any manner. Except for the periods and in the manner described in the findings of fact, it does not appear that Jack made decisions for the licensee or issued orders to its employees. To repeat what has already been suggested, while Jack's conduct during his stay at the station on the surface might not have been significantly different from an owner's, and he had apparently to the subordinate employees invested himself with an attitude of dominance, on analysis his intervention in station affairs is still seen to have been subject to Don's record legal control. That Don was indiscreet, and even foolish, in permitting his brother (who, he had indicated to the Commission, would not participate in the ownership or control of KRLA), to visit the station, let alone perform ambiguous acts, whatever the temptation because of the station's allegedly precarious condition, goes without saying. But while Don's judgment may be condemned, the record would not permit a conclusion that his good faith is to be impugned, for he is not shown to have retired, in favor of his brother Jack or anyone, from ultimate control of

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KRLA. His absentee ownership presented dangers of misinterpretation even where ordinary employees were concerned, a danger which was intensified when one having so large a financial stake in the physical assets of the enterprise as Jack was involved. From these considerations, it must be concluded that since the time of the assignment of the KRLA license to Eleven Ten Broadcasting Corporation, Jack Kent Cooke,

a Canadian citizen, has not exercised control with respect to the operations of the station in a manner which may be considered contrary to the provisions of Section 310 of the Communications Act of 1934, as amended, and the Commission's rules and policies promulgated thereunder.

4. Programing Issue. This involves a determination of "whether, in light of its operations since it acquired Station KRLA, the licensee's program proposals contained in its application for Commission consent to assignment of the license***" were made in good faith. Of necessity, the resolution of this issue requires a retrospective application of KRLA's operations to the question of intent at the time the applicant sought the Commission's consent to acquire the station's license. While it is obvious from the record, as well as from the pertinent facts herein found under this issue, that Eleven Ten did not adhere to its original proposals to the Commission with reference to programing, this fact would not in itself necessarily imbue with bad faith, malice or deception the applicant's representations to the Commission in regard to projected program service. It is shown, upon the record that heavy financial losses requiring immediate recoupment forced a re-examination of the station's program schedule, and no reason implying a more vicious self-interest than an attempt to protect the applicant's investment has been developed by the evidence. However, with this understandable stimulus to a program schedule which offered a greater financial return, it was not, as recognized by the Broadcast Bureau, "until five months after Eleven Ten assumed operation of KRLA" that "Don took the first action toward the abandonment of Eleven Ten's programing promises made in the assignment application." It is realized that, during this period, the station was still generally operating under the assignor's program format; nevertheless, the delay in the first affirmative step toward departure from the program proposals obviously would not strengthen, under the limited issue of "good faith", the Bureau's contention as to the presence of bad faith

on the part of the applicant at the time the assignment application was prepared and filed with the Commission. It would appear to be unreasonable to infer, either from a change so long delayed or from representations in documents filed months after the assignment application was received by the Commission, that the applicant had not intended to carry out its original representations. While it did not raise program schedules to a more commendable level until prodded by correspondence from the Commission, this factor, in light of the foregoing analysis, is not

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material. In this connection, there was no evidentiary showing relating to the time of filing the application; and, as indicated, the fact that the applicant departed, or attempted to depart, from its programming representations, should not, in and of itself, receive reflexive dispositive significance to its prejudice under the limited issue which relates solely to "good faith" at the time of filing. It is to be understood, however, that the material departures, both attempted and realized, from the promises made in the assignment application merit severe condemnation, as do Donald Cooke's programming instructions to his staff, particularly those under date of April 12, 1960 which were not satisfactorily explained by him in this record. A suspicion at least lingers that his April 12, 1960 instructions were prompted by a desire to make only a temporary and token compliance with the programming representations contained in the assignment application in an effort to forestall action by the Commission. Were the programming issue in this proceeding in terms of promise versus performance, a conclusion adverse to the applicant would, of course, be compelled.

5. The Find Perry Allen and Golden Key contests both represent a type of station operation which, if the broadcast industry is to continue maturing, should be relegated to oblivion. With reference to the Perry Allen contest, it is obvious from the findings

of fact that it was conceived in cynical fashion to play upon the gullibility and cupidity of the audience, in the hope of gaining widespread quick publicity for the new KRLA. With arrogant disregard of the true facts, announcements were broadcast to induce listeners to believe that Allen was in Los Angeles and that the large initial prize was at least possible of attainment, when, in reality, he was across the continent at the time. Manifestly, the KRLA management intended to heighten the publicity effect by dangling, as it were, before the audience a great prize which it did not expect to pay. It thought, indeed, that it would be able to settle for a much smaller prize than that originally announced; but, through unforeseen circumstances, it was obliged to pay the full prize.

6. The Golden Key contest may be considered as akin to the Perry Allen contest. At the outset, it too offered the hope of a huge prize, although the station management knew that no one had a chance of winning until the prize had substantially dwindled in value, and it would then, by the use of leading language in the announcements, permit someone to locate the key and obtain the reward. It is also of particular significance that many continuous hours of broadcasting time were devoted to a series of irresponsible announcements of this and other contests, in disregard of the programing obligations which had been assumed by the applicant.

7. As a general matter, these contests are to be condemned. As program subjects they are found to be completely without merit. Both contests, and particularly the Perry Allen contest, were conducted in shabby and irregular fashion, and the station's program time was subverted to improper purposes. It appears, however, that KRLA has discontinued this type of operation, and for this reason its derelictions will be less stringently viewed than would otherwise have been the case.

8. Alteration of Program Logs. It is established that the KRLA program logs were altered improperly to reflect the broadcasting of short religious programs which, in fact, were not broadcast. The only possible purpose of this was to deceive the Commission. It appears from the evidence, however, that Donald Cooke was not aware of the mislogging until he received notice from the Commission. Thereafter, his investigation of the matter consisted of "thoroughly" interrogating Edwin V. Schulz (general manager) who informed him untruthfully that the programs had in fact been presented; and although Herb Heiman (program director) was aware of this misinformation, he failed to correct it. Cooke notified the Commission accordingly. He claims not to have learned that he had been misinformed by Schulz until a few weeks before commencement of hearing in this proceeding, and there is no evidence to refute his claim. Obviously, Cooke should have made a far more detailed investigation of such an important matter than merely to question Schulz "thoroughly." Numerous other sources of information and methods of obtaining the true facts could and should have been explored by him. While Cooke is here held to have been neglectful of his duty properly to inform himself before reporting to the Commission in the matter of the alleged mislogging of religious programs, nevertheless responsibility for the initial misreporting to the Commission may not, on the basis of this record, be imputed to him or Eleven Ten Broadcasting Corporation of which he is the controlling head.

9. Short-Term Renewal. With regard to the final issue governing the proceeding, while the ultimate conclusion herein favors the applicant, as heretofore indicated this general ruling cannot be considered an approval of all of its behavior since it acquired Station KRLA, and it is here determined that Section 307(d) of the Communications Act Amendments, 1960, and Section 3.34 of the Commission's Rules authorizing short term grants, find appropriate use in this proceeding. A renewal of license to KRLA for the full three-year

period is not indicated, but a one-year renewal is appropriate and will serve the ends of justice and the public interest. This ruling is compelled by the detailed findings of fact and conclusions hereinabove set forth. In sum, the hapazardly directed nature of the station's operations after the Commission was advised, as an inducement for approving the assignment, of

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definite operational plans; the frantic and undignified promotional activities, supplemented by some days of continuous programing which publicized contests and ignored the station's other obligations to the public; the obviously inept absentee direction marked by programing irresolution; and the failure of Donald Cooke adequately to inform himself regarding program mislogging prior to submission of his report to the Commission, all betoken censurable managerial immaturity and operational shortcomings. It is true that after admonition was received from the Commission, the station's program service improved; but whether Eleven Ten Broadcasting Corporation, under the record control of Donald Cooke, may, in light of its past, be relied upon to deliver a meritorious service on a permanent basis in accordance with the requirements of the Communications Act and the Rules of the Commission, is a question which can be answered best after surveillance during the forthcoming short-term renewal period hereinafter specified. In this connection, the general competence of Donald Cooke to serve as a controlling head and principal policy maker of Eleven Ten Broadcasting Corporation may also be observed during this period.

ACCORDINGLY, IT IS ORDERED, this 20th day of April 1961, that unless an appeal from this initial decision is taken to the Commission by either of the parties to the proceeding or the Commission reviews the initial decision on its own motion in accordance with the provisions of Section 1.153 of the Rules, the above-captioned application for license to cover construction permit is granted; and that the

above-captioned applications for renewal of licenses, insofar as they contemplate the regular three-year term, are denied, but are granted only to the extent that the said licenses are renewed for the term of one year.

/s/James D. Cunningham and Herbert Sharfman
Hearing Examiners
Federal Communications Commission

Released: April 21, 1961
and effective 50 days thereafter,
subject to the provisions of the
Rule (1.153) cited in the ordering
clause above. Exceptions, if any,
must be filed within 30 days of the
release date unless an extension is
duly granted.

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,239

IMMACULATE CONCEPTION CHURCH OF LOS ANGELES
and
LAKE CONGREGATIONAL CHURCH OF PASADENA,
Appellants,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee.

No. 17,240

ELEVEN TEN BROADCASTING CORPORATION,
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee.

Appeal from Decision and Orders of the
Federal Communications Commission

United States Court of Appeals
for the District of Columbia Circuit

Vol. II

Pages 345A-638

FILED APR 15 1963

Nathan J. Paulson
CLERK



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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,239

IMMACULATE CONCEPTION CHURCH OF LOS ANGELES

and

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FEDERAL COMMUNICATIONS COMMISSION,

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No. 17,240

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Appellant,

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FEDERAL COMMUNICATIONS COMMISSION,

Appellee.

Appeal from Decision and Orders of the
Federal Communications Commission

JOINT APPENDIX

[979]

[F.C.C. Received July 21, 1961]

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EXCEPTIONS OF ELEVEN TEN
BROADCASTING CORPORATION

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Exception 2.

Par. 5. The finding that "The total consideration to be paid to Pacific was \$900,000." The consideration was \$900,000, plus the costs not to exceed \$115,000 involved in the construction of the 50 kw facilities (BAPL-171, Ex. A (1) Section IV and V.).

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Exception 31.

Par. 23. The failure to find that Wheatley's primary responsibility between July 1 and September 1 was to physically produce the new program schedule and to build the staff necessary to implement it (T. 237). The task of creating the new program and staff was compounded by the inherent problems of keeping the existing program service on the air (T. 373-374). Wheatley auditioned 100 to 150 new announcers (T. 238); supervised, evaluated and eventually terminated the old staff announcers (T. 240); created a new music library; organized a continuity and production department (T. 255). These duties, together with the supervision of the existing day-to-day operation, required 14 to 16 hours of Wheatley's day (T. 255).

Exception 32.

Par. 24.* To that portion of the finding pertaining to the preparation of budgets. The Initial Decision failed to find that Jack Cooke's conversations with Dobson on this subject were at Donald's specific request communicated to Jack before he came out to Los Angeles (T. 427, Lines 18-24). The Initial Decision failed to find that as early as May 25, 1959

-- or six weeks prior to Jack's coming to Los Angeles -- Dobson had received written communication from Donald Cooke concerning budgets in which Donald gave him instructions and criticism and, in fact, included sample budgets (App. Ex. 17, pp. 6-8, T. 1151).

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Exception 40.

Footnote 11. To the first sentence in that footnote. The Initial Decision failed to make detailed findings concerning the correspondence between Donald Cooke and members of KRLA's staff in a manner comparable to the findings made on other aspects of this proceeding. The "considerable record evidence" referred to in the Initial Decision comprises several hundred pages of evidence (App. Exs. 8, 16, 17, 18, 19, 20). This material constitutes an important part of the applicant's case, and Eleven Ten is entitled to a detailed recitation of the facts. For the convenience of the Commission, Eleven Ten is attaching as Appendix A detailed findings based upon that "considerable record evidence" and excerpts to the Initial Decision's failure to find accordingly.

Exception 41.

Footnote 11. The failure to find that this correspondence represents a continuous pattern of supervision on the part of Donald in contrast to Jack's sporadic visits.

[1003]

Exception 56.

Par. 31. The failure to find that Jack's work in the accounting department was pursuant to previously issued instructions from Donald (T. 320, 429, 552).

Exception 57.

Par. 34. The failure to find that Wheatley had been authorized to give written contracts (T. 234).

Exception 58.

Pars. 36-42. The ruling of the Examiner overruling the objection to the consideration of the "Golden Key" Contest or any contest other than Perry Allen in these proceedings (T. 645) for the reasons stated in the transcript at pages 643-645.

Exception 59.

Par. 36. The finding that the "Golden Key" contest was conceived by Jack. This finding is based on the testimony of Wheatley (T. 1182) who did not participate in the conception of that program. Jack, one of the originators, testified that this was a joint conception based on the opinions of many people (T. 636-637). Exception is also made to the title preceding paragraph 35, for the above reasons.

Exception 60.

Par. 39. The failure to find that the clues could have applied to any location in the Los Angeles area, that they were ambiguous, that they were submitted to Jack for review and that Jack knew the location of the key and found the clues applicable to the location (T. 640, B.B. Ex. 1).

Exception 71.

Par. 43. The failure to find that the "kick-off," schedule to coincide with the increased power, was of crucial importance to KRLA. The event was to be heralded by much publicity and a cocktail party to which the area's leading advertisers were invited (T. 431, 438-439); that the application for increased power had been filed during the week of August 24, 1959, and that approval was expected before the September 1 target date (T. 440-441).

Exception 72.

Par. 43. The finding that Jack told Allen he would be needed for the "kick-off" of KRLA's Top Forty Format.^{4/} (Emphasis supplied).

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4/ The term "Top Forty" is used throughout this decision to describe the KRLA operation. While the term is technically correct, Eleven Ten excepts to its use if it implies a programming format which ignores religion, education, discussion, etc., or signifies a departure from the promises made in any application filed by Eleven Ten. For evidence of the fact that Top Forty programming applies only to the selection of music and does not preclude broadcasting of programs in the other categories listed above see testimony of Wheatley at T. 465-369.

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Exception 81.

Par. 52. The failure to find that the decision to pay the finders of Perry Allen was made by Donald Cooke despite the feelings of Schulz and Jack Cooke that the matter be litigated (App. Ex. 18, pp. 43, 52).

Exception 82.

Par. 52. The failure to find that:

"While Donald Cooke knew and approved of the general nature of the Perry Allen Contest, he was not aware of its details when he authorized it (T. 459, 724, 804-805, 870-871). During the events leading up to the Perry Allen Contest and during the running of the contest, Donald Cooke was not in Los Angeles" (T. 780).

Exception 83.

Par. 53. The failure to find that the station awarded prizes to all the winners of the contests which it had conducted (T. 662A).

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Exception 87.

Par. 59. The failure to find that:

"The details of the lease arrangement and other accompanying transactions were disclosed to the Commission and form part of the application pursuant to which, with Commission approval, Eleven Ten became the licensee of KRLA (T. 404, Official Notice). This background material was reviewed in detail in this hearing although these matters were not in issue. There were no understandings regarding the operation or control of KRLA between Donald Cooke and

[1012]

Jack Cooke, explicit or implied, which were not disclosed to the Commission (T. 409), and there were none at the time of the hearing" (T. 414).

* * *
Exception 92.

Par. 65. The first sentence in that paragraph as being contrary to the evidence and the failure to find as follows:

"Wheatley testified that the programs appearing in the renewal application did not constitute any great

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departure from the programs proposed in the assignment application. They were essentially the same. There may have been a slight difference in time or the length of the program but not in the concept of the programming as it was proposed (T. 269-271, 379, 380, Cf. Ex. 11 of BAPL-171 Official Notice, T. 404).

"It was Wheatley's belief that the station was not physically capable of producing the programs which had been promised in the transfer application until personnel were hired and trained, new

"Had the station been able to get itself organized and functioning smoothly at the outset, the public service programming proposed in the transfer application would have been substantially on the air about two months after the operations began (T. 384), but there was not enough time to hire personnel (T. 238), evaluate old staff members (T. 239), compose station identification and promotion jingles (App. Ex. 8, pp. 5-19), organize a continuity and production department (T. 255), run a radio station with one format and create a new program format, and at the same time create, promote, and secure acceptance of public service programs. There were not enough hours in the day" (T. 373-374).

Exception 94.

Par. 66. The last sentence of that paragraph, since it excerpts only two sentences from a lengthy exhibit, thus, unfairly representing its contents. In the exhibit from which the sentences are taken, there are detailed references to religious, agricultural, educational, and community service programming. Because of the length of these exhibits, Eleven Ten specifically incorporates by reference, as if fully reproduced herein, Exhibit 2 attached to the renewal application dated November 12, 1959, and excepts to the failure of the Initial Decision to find accordingly. Exception 95.

Par. 66. The placing of the first and last quotations in that paragraph, which seems to indicate that they were taken from different

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documents. In fact, they are quotations from the same document, Exhibit 2, to the November 12, 1959, renewal amendment and their order of appearance in that document is reverse of their order in this paragraph (loc. cit. pp. 1, 4). Exception is also taken to the phrase "for the first time" in the second sentence if that phrase connotes a prior concealment or violation of duty to disclose.

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Exception 98.

Par. 69. The failure to find that Schulz in the cited memo stated that KRLA would be able to perform a saturation-type campaign for public service organizations doing a " . . . resultful job for them" instead of the scatter-shot approach practiced by other stations (App. Ex. 18, p. 44).

Exception 99.

Par. 69. The failure to find that in the cited memo from Schulz to Cooke the former stated that the station had turned down \$115,000 in commercial religion " . . . true to our word to the FCC . . ." and that the station was arranging for "Religious Featurettes" using a rotating group of spiritual leaders.

Exception 100.

Par. 69. The failure to find that Schulz reported to Donald that the station had no substantial accounts and was faced with heavy termination payments to members of the staff (App. Ex. 18, p. 46).

Exception 101.

Par. 70. The failure to make findings concerning the other contents of Heiman's letter of October 4, 1960, such as publicity for high school football and pinpointing weather forecasts of specific areas (App. E. 19, pp. 2-3).

[1017]

Exception 102.

Par. 72. The last sentence of that paragraph. It is a non sequitor and inaccurately reflects the evidence. The referred-to testimony was as follows:

Q. "Wasn't the purpose of this exhibit to entice agencies to use Station KRLA because they could carry spot announcements on Sunday, have commercial continuity on Sunday because of the lack of religious programs during those hours on Sunday morning?

A. "I don't believe it was that particular -- I think what it was that Mr. Schulz had in mind at that time was that our ratings would improve by carrying a seven-day popular music type of operation. I don't think it was made on the commercial basis particularly." (T. 913, lines 12-21).

There is nothing inconsistent between this testimony and the quotation in paragraph 72.

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[1018]

Exception 104.

Par. 73. The failure to find that:

"As early as November, 1959, Heiman entered into conversations with representatives of religious organizations in the area looking toward the production of programs in their behalf (T. 927). The occasion was the production of a program which was entitled "Spirit of Today" which embodied religious messages but was not in the nature of a religious service (T. 933-936). This program was in response to a conversation he had with Donald Cooke in which the latter specifically called his attention to the need for development of public service programs (T. 933).

"Pursuant to these plans and conversations, Heiman contacted a number of religious groups, by letter and personally, offering them the facilities of the station and inviting their cooperation. The first program of the "Spirit of Today" was broadcast on December 5, 1959 (T. 942, App. Ex. 22, p. 1). Conversations leading to this broadcast were held with the religious group, Pacific Bible Seminary, at least ten days to two weeks prior to the air date" (T. 942).

"In line with its representations in the transfer application (App. Ex. 11, p. 2 of application), the station in September, 1959, entered into negotiations with the March of Dimes Foundation which eventually culminated

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in programming for that organization (T. 74). In October, 1959, KRLA contacted the Lake Avenue Congregational Church in connection with programs which were carried by the station beginning in January, 1960 (T. 173). In addition, as early as June, 1959, the station carried spot announcements for the National Safety Council (T. 164). Beginning as early as October 11, 1959, KRLA carried public service promotions for such institutions as the Boys Republic, the Fire Prevention Week, Muscular Dystrophy, Union Rescue Mission, Foster Parents, Big Brothers, Good Will Industry, Civil Air Patrol, Income Tax Information, Multiple Sclerosis, Diabetes, Cancer, Boy Scouts, National Guards, etc. These public service promotions were predominantly live. They were carried as often as twenty-one times a day" (App. Ex. 25, T. 1010).

Exception 105.

Par. 73. The last sentence of the paragraph. It incompletely represents the evidence: a) At the time of Don's visit on November 9, 1959, in addition to the programs enumerated in the finding, the station

was carrying "Word for the Day" which was begun in the second week of October (App. Ex. 19, p. 20). b) The station was also, by that time, carrying "Crime Beat," an eight-times-a-day program featuring live and transcribed messages from the FBI and local police. The program was begun two months before Don's arrival (App. Ex. 19, p. 24). c) The station was also by that time carrying "Entertainment Compass," a six-to-ten-times-a-day program featuring

[1020]

a calendar of events, art shows, theater openings, athletic events. This program was begun on October 17, 1959, and was comparable to the description of "Town Crier" contained in Exhibit 11, p. 2, of the transfer application

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Exception 107.

Par. 75. The portion of the paragraph beginning with "More specifically" It incompletely represents Don's instructions to Heiman. In addition to the matters discussed in the findings, Don told Heiman that he wanted "Spirit of Today" from 6:00 to 6:30 a.m. and 11:00 to 12:00 midnight (App. Ex. 19, p. 22).

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Exception 119.

Par. 87. The failure of the Initial Decision to make detailed findings concerning the testimony of public witnesses and the present programming of KRLA as covered in detail in Appendix B.

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Exception 131.

Par. 100. The failure to find that Schulz's affidavit specifically stated, "Any decision with respect to this matter was made without instructions from or advice to Donald Cooke inasmuch as I did not feel that

it involved a policy decision." Also to the failure to find:

"Donald Cooke's reply was based upon his belief that the true state of matter was as represented in Schulz's affidavit and the representations which he had made to him (T. 739, 811). Donald Cooke had never issued instructions to Schulz to make these additions and had no knowledge prior to the Commission's letter that any additions had, in fact, been made (T. 740).

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Exception 133.

Par. 102. The failure to find that Heiman's statement was not under oath (App. Ex. 24) and that prior to the signing of this

[1027]

statement, Heiman did not consult with any superior employee or officer of KRLA (T. 970). Heiman testified that he never intended not to tell the truth to the FCC but wanted to be as elusive as possible since neither Donald Cooke nor KRLA's Counsel were aware of the state of events pertaining to the addition to the logs until after this statement was given to the Commission (T. 976-978).

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APPENDIX A

After he arrived at the station in the middle of July, 1959, Schulz exchanged frequent and detailed letters with Donald Cooke (App. Ex. 18 pp. 12-94). In addition to the letters, Donald Cooke was in regular and frequent telephone communication with the staff (T. 693). An analysis of the general contents of these letters indicates that Donald Cooke was cognizant of and constantly exercising his responsibility and authority as the licensee and in conjunction with his employees made the decisions controlling the operation. The subject matter of some of the correspondence can be summarized as follows:

A) On July 29, 1959, Donald Cooke wrote to Ed Schulz concerning the difficulties which he was encountering with Vernon Dobson's reports (App. Ex. 18 pp. 15, 16). Next day, Donald Cooke again wrote to Ed Schulz concerning the rate card of the station and possible business (App. Ex. 18 p. 17).

B) On August 3, Ed Schulz sent him a monitoring report on the competitive stations in the Los Angeles area (App. Ex. 18 pp. 18, 19).

C) Again on the 3rd of August, Ed Schulz sent Donald Cooke a nine-page report of the station's activities including the accounting problems, engineering, programming and sales. An analysis of the report indicates that the station's physical setup was inadequate at the time that the new corporation took over the operation of the station and that many of its procedures were wasteful (App. Ex. 18 pp. 22-23). On August 6, 1959, Donald Cooke was advised by the certified public accountant that the financial reports from Eleven Ten were inadequate (App. Ex. 18 p. 29).

[1030]

D) On August 7, Ed Schulz wrote a seven-page report to Donald Cooke highlighting the problems which the station had had including accounting department deficiencies, weekly sales reports, cancellations (T. 704), and personnel problems. He pointed out that, in the past three weeks, the change of format cost more than \$20,000 in monthly billings (App. Ex. 18 pp. 30-35).

E) Again on October 5, 1959, Schulz reported to Donald in detail as to the problems which were then besetting KRLA which included personnel, unions, sales, engineering, programming and finances. Schulz informed Donald that the station has turned down over \$115,000 in commercial religion but that Herb Heiman was working on a sustaining religious series to be rotated among the faiths (App. Ex. 18 pp. 40-46).

F) On October 15, Don acknowledged the report in a five-page memo which expressed deep concern over the losses, gave instructions on several problems, and requested more frequent reports (App. Ex. 18 pp. 49-53).

G) Again on October 26, 1959, Schulz sent Don Cooke a four-page detailed report on the operations of KRLA (in which he agreed with Donald Cooke's stated desire for constant supervision and minute policing of the operation) (App. Ex. 18 pp. 54-58).

H) On November 2, 1959, Donald wrote to Ed concerning the response to the Commission's MacFarland letter of October 28, 1959. In that letter, he instructed Ed Schulz, "We want to submit the fullest information, described in the most favorable light, consonant with the facts" (App. Ex. 18 p. 58).

I) On November 8, while in Washington, Schulz wrote a regular weekly report to Don who was then in California at KRLA (App. Ex. 18 pp. 62-63).

J) On November 30, 1959, Donald wrote a letter which followed a telephone conversation with Ed Schulz setting out the exact reports which he expected Ed Schulz to supply him (App. Ex. 18 pp. 64, 65).

K) On January 13, 1960, Ed Schulz wrote a memo to Donald Cooke pertaining to the personnel of the station (App. Ex. 18 pp. 68-71).

L) On the same date, Donald Cooke wrote to Schulz and Herb Heiman instructing them to adhere to the church services in the KRLA schedule (App. Ex. 18 p. 72).

M) In addition, on January 13, 1960, Ed Schulz wrote to Don Cooke listing the additional religious programming on the station and the following day forwarded a complete religious and public service program schedule (App. Ex. 18 pp. 73, 79).

N) Schulz sent a letter to Donald Cooke on January 15, 1960, pertaining to the business activities of the station and the performance of the KRLA disc jockeys (App. Ex. 18 pp. 80-81).

O) On January 18, 1960, Ed Schulz reported to Don Cooke about the ratings of the station. In addition to this correspondence with Ed Schulz, Don Cooke was in contact with Armond Lamont, of the station's sales staff (App. Ex. 18 pp. 84-85, 87-92, T. 708 Cf. BAPL-171, Section IV par. 12). On March 1, 1960, Bill McMillan, the director of news public affairs for the station, wrote a complete summary of the station's activities to Donald Cooke (App. Ex. 18 pp. 93-94).^{7/}

^{7/} During the further proceedings in Washington, Counsel for KRLA offered proof of an additional 67 letters to and from Donald Cooke and Heiman and Schulz (T. 1313).

In addition to the regular correspondence with Schulz as general manager, Donald Cooke received direct reports from and issued instructions to Bill Wheatley during his tenure as program director (App. Ex. 8, pp. 5-19). The practice was followed with Herb Heiman, first as production supervisor and later as program director. Beginning with the September 26, 1959, letter, Herb Heiman thanked Donald Cooke for being appointed production supervisor at the station. In that letter, Heiman sent Donald Cooke detailed lists of the station's weekly production schedules, personnel lists, etc. On October 4, 1959, Herb Heiman reported to Donald Cooke on the status of current operations, staff and programming. He also informed him that the station was incorporating a 30-second farm newscast (App. Ex. 19 pp. 1-3). On October 18, 1959, he informed Don that the station was utilizing the interest of high school teenagers and youngsters and creating a special feature for the major schools and that the station was still shortstaffed (App. Ex. 19 pp. 4-5). On October 26, 1959,

Donald Cooke advised Herb Heiman again that he wanted a weekly report of the programming department prepared each Friday. He informed Herb Heiman to obtain tapes of leading disc jockeys in the country sending the best tapes to New York for final review. He inquired in detail about specific activities of the individual disc jockeys and requested specific opinions on each (App. Ex. 19 pp. 6, 7). On October 26, 1959, Herb Heiman informed Don Cooke that the station was engaged in intensive public service promotion in addition to featuring "KRLA Best Buy of the Day" (App. Ex. 19 p. 8). On October 31, Herb Heiman reported to Donald Cooke in response to the latter's letter of October 26 concerning the style and activities of the individual disc jockeys and the growth

[1033]

of KRLA's popularity (App. Ex. 19 pp. 10-11). On November 5, 1959, Donald Cooke wrote a letter to Herb Heiman concerning the individual disc jockeys and insisted that the news department function smoothly. Donald Cooke had listened to tapes of the station which he requested at frequent intervals (App. Ex. 19 p. 7). On November 27, 1959, Herb Heiman reported to Donald Cooke concerning individual disc jockeys and ratings (App. Ex. 19 p. 13). On December 11, 1959, Herb Heiman reported to Donald Cooke pertaining to the sound of the station stressing steps being taken to improve its total appearance on the air (App. Ex. 19 pp. 14-15). On December 26, 1959, Herb Heiman wrote a letter to Don Cooke pertaining to the holiday Christmas programming which the station had carried and advising that the special file on public service programs had been forwarded (App. Ex. 19 p. 16). On December 31, 1959, Herb Heiman wrote a letter to Don Cooke which included among others a report of the station's Christmas campaign and such features as Recreation Scope, Frosty's Frost Warnings and complete weather breakdown (App. Ex. 19 p. 17). On January 4, 1960, Donald Cooke wrote a detailed

letter to Herb Heiman analyzing the promises which the station has made to the FCC in the transfer application, discussing the details of each individual program and instructing him to carry out the representations which were made to the Commission (App. Ex. 19 pp. 20-25). Donald Cooke insisted that Heiman begin work on such portions of the program proposal which have not yet been complied with and requested prompt reports concerning these activities. On January 8, 1960, Herb Heiman reported to Donald Cooke concerning the program proposals which have been put into action upon the receipt of Don Cooke's memo of January 4 (App. Ex. 19 p. 26).

[1034]

APPENDIX BThe Operation of Station KRLA

[This Appendix (R. 1034-1052) is reproduced as Appendix B to the Brief for Appellants Immaculate Conception Church of Los Angeles and Lake Congregational Church of Pasadena.]

[1056]

EXCEPTIONS TO CONCLUSION

1. The foregoing Exceptions to the Findings of Fact demonstrate that the Examiners' Decision had, as its factual basis, an interpretation and selection of the evidence which was prejudicially unfavorable to the applicant. Many facts favorable to the applicant were omitted while all facts adverse to the applicant were recited in detail. However, even upon the facts as found by them, the Examiners properly concluded that there had been no transfer of control "contrary to Section 310 of the Communications Act of 1934, as amended, and the Commission's Rules and policies promulgated thereunder"; that there was no evidence that the licensee's program proposals submitted in the assignment application were not made

in good faith; that responsibility for alteration of the program logs could not be imputed to the licensee or its stockholder; and that, while certain acts and decisions made by or on behalf of the licensee may have been censurable, they reflected, at worst, managerial immaturity and; that any doubts as to the ability of the licensee and its management to render a meritorious service could best be resolved by observation during a one-year license period.

2. While applicant does not except to the ultimate conclusion of the Examiners but, in fact, accepts the short-term license as an opportunity to demonstrate its ability to render a responsible and meritorious service, applicant does except to the failure of the Examiners to set forth in their conclusions the following:

[1057]

A 1) That, in less than one year from the date that it assumed control, the licensee not only fulfilled all of its program representations to the Commission but also established for itself a record of sensitive and responsive service to the community. This record reflects an ever increasing knowledge of the area being served and confirms the licensee's intention to render the best possible service consonant with its ability. This record cannot be minimized by the argument that part of it was achieved after the Commission initiated an inquiry. The inquiry started less than six months after the assignment during which six months the licensee had been beset by staff problems, engineering problems, management difficulties and unexpected financial reverses.

B 2) That its record of achievement was established by the testimony of the community itself. The responsible citizens who appeared on behalf of religious, civic, educational and charitable organizations gave their unqualified endorsement to the licensee and paid specific tribute to the service which KRLA has and is rendering. The evidence was not offered in the compressed form of platitudes or generalities tendered in

charity to one in trouble. These representatives were subject to cross-examination. They testified as to the specific deeds and programs of KRLA; and, in almost every instance, the specific reference was to an unique and unduplicated effort including: The only Catholic Mass in the State of California; the only regular hour-long service by a Los Angeles Protestant church; one of the two regular sustaining programs carried by Los Angeles radio stations on behalf of the ministers and representatives of the Protestant,

[1058]

Catholic, and Jewish faiths; the only radio service which offers unique coverage in depth to numerous civic, charitable and educational organizations to a degree that distinguishes its efforts from all other radio stations in the community.

3 These affirmative facts, when considered in conjunction with the findings and conclusions, make it apparent that the public interest, convenience, and necessity will best be served by granting Eleven Ten a renewal of license for one year during which time KRLA will render program service which will confirm that Eleven Ten Broadcasting Company is competent and qualified to hold the position of trust which it has assumed as the licensee of Station KRLA.

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July 21, 1961

[1059]

[Received July 21, 1961 - F.C.C.]

BROADCAST BUREAU'S EXCEPTIONS TO THE INITIAL DECISION^{1/}

On April 21, 1961, Examiner Cunningham released an Initial Decision in this proceeding (FCC 61D-53), proposing to grant the application for renewal of license of Standard Broadcast Station KRLA, Pasadena, California for a term of one year. The Broadcast Bureau excepts to the Initial Decision and urges that the application of Eleven Ten be denied.

Exceptions to the Findings of the Initial Decision

1. We except in finding 28, line 5, to the sentence commencing with the word "Wheatley" as vague and indefinite. In lieu thereof, we urge the following finding:

"Jack directed the search for new disc jockeys" (Applicant's exhibit 13, pp. 2 and 3. This exhibit was submitted by Eleven Ten as part of its sworn response to the Commission's 309(b) letter).

2. We except to finding 30, line 6, to the failure to find:

"Schulz had no office at the studios, his office was at the KRLA sales office in Hollywood" (Tr. 294-295).

1/ By Order released June 19, 1961, the date for filing exceptions was extended until July 21, 1961.

[1060]

3. We except to finding 37, line 2, to the failure to insert after the word "broadcasting" the phrase "nothing but".

4. We except in finding 46, line 3, to the word "Allen" as inaccurate. We urge the correct word should be "Jack" (Tr. 447-448).

5. We except to finding 56, line 10, to the failure to find:

"The rent has been accrued with no provisions for interest payable to Broadcast Equipment Corporation".

6. We except to finding 79, line 13, to the failure to find:

"Fry questioned the propriety of this notarization but nevertheless Don asked him to notarize the 'affidavit' " (Tr. 1065-1067).

7. We except to finding 86, line 7, to the failure to find:

"The music played during the program was no different in any significant sense from the music Allen played during the other hours he broadcast as a disc jockey" (Tr. 1275).

8. We except to finding 100, line 4, to the sentence commencing "He testified" as not supported by the record. In lieu thereof, we urge the following finding:

"He testified that he questioned Schulz thoroughly, but did not recall whether he questioned Heiman thoroughly" (Tr. 808).

Exceptions to the Conclusions of the Initial Decision

9. We except to conclusion 1, line 8, to the failure to conclude after the numeral "924":

"An example of this attitude toward alien participation in broadcasting is reflected in the language of Section 310(a)(4) of the Communications Act which provides, inter alia, that a license should not be granted to or held by any corporation of which an officer or director is an alien. There could be no clearer expression of Congressional intent that alien participation in broadcasting is contrary to the public policy of the United States. Since Section 310 precludes an alien from being an officer or director of a corporate licensee, then obviously the Congressional intent was to preclude an alien such as Jack, irrespective of his official title, from acting in the capacity of an officer or director".

[1061]

10. We further except to conclusion 1, line 16, to the failure to conclude:

"Therefore, whether a violation of Section 310 did exist must be gleaned from the facts relating to the manner in which Eleven Ten and Broadcast Equipment Corporation came into being, the method by which Eleven Ten has been financed and the nature and extent of Jack's participation in the affairs of the corporation and the day to day operation of KRLA".

11. We except to conclusions 2 and 3 as not supported by the findings in the Initial Decision, and as error as a matter of law. In lieu, we urge the following conclusions:

1. On the basis of the findings, it is obvious that Jack's participation in the operation of KRLA and the affairs of Eleven Ten was no

different, to say the very least, from the participation an officer or director would have. Indeed, as the findings reflect, Jack was in fact the dominant, controlling executive in the management and operation of the station. The conclusion, therefore, which inevitably must be drawn is that Section 310 of the Communications Act has been wilfully violated. This violation alone is sufficient to justify a denial of the renewal application, especially in view of the licensee's repeated assurances that both Jack and Don knew that as an alien Jack could not participate in the control of KRLA, either directly or indirectly. These assurances were made to convince the Commission that the application to assign the license of KRLA to Eleven Ten could be granted without a hearing.

2. Equally serious is Don's response when the Commission in a 309(b) letter dated January 28, 1959, questioned whether Jack rather than Don, was the real party in interest in the assignment application. In his response, Don led the Commission to believe that he had first discovered that KRLA was for sale for \$900,000 and that because this price was beyond his personal financial resources, he then sought financial assistance from

[1062]

Jack. Obviously, this representation was designed to give the Commission the impression that Don had initiated the purchase. The testimony of Don and Jack, however, emphasizes the deceitfulness of Don's response. ^{1/} Thus, the findings show: that it was Jack who wished to invest in American broadcast stations and was advised by broadcast counsel that the lessor-lessee relationship would meet with approval; that before Jack commenced looking for a station the plan of financing used for acquiring KRLA had been agreed upon, including the option arrangement; that Jack visited various cities looking for radio properties; that Jack located KRLA

and conducted all negotiations for its purchase; that Jack committed Don to the purchase price which Don said was beyond his financial means; and that the amount of Don's financial contribution was set by his counsel.

3. While the likening of Jack's control to that of an officer or director is sufficient to dispose of the control issue, the credible facts of record also demonstrate that Jack has always been the real party in interest and that Don was only the means by which Jack intended to achieve his desired end; namely, the ownership of broadcast properties in the United States. The facts enumerated above sufficiently prove this point. However, other uncontroverted evidence buttresses our conclusion.

4. As shown above and in greater detail in the findings, Jack was intent on obtaining a radio property or properties. In his search for a station, there was no specific ceiling on what was to be paid even though Don is a man of limited financial means. The obvious reason, of course, is because it had been preordained that whatever station was found would ultimately be Jack's. Jack ultimately was to become the licensee of any station to be acquired. This end originally was to be achieved by means of Jack's option which was cancelled after the Commission raised a question with respect thereto. While the Commission had been told the option was cancelled, Don still understood that Jack ultimately would be the licensee of KRLA. For, as his testimony reveals, Don believes Broadcast Equipment (Jack) is to own any and all physical facilities of the station. This understanding rests upon his continuing belief that when Jack becomes a citizen he has the right to acquire Eleven Ten.

5. This understanding of Don's fully explains Jack's unusual generosity in not compelling Eleven Ten to pay any rental to

1/ Had Don made a truthful response, the assignment application probably would have been dismissed because of the provisions of Section 310 of the Communications Act. At the very least, it would have been set for hearing to resolve this very question. Considering this deceit of Don's and his and Fry's testimony concerning the Schulz "affidavit" we can attach no credence to his testimony.

[1063]

Broadcast Equipment under the lease agreement while permitting the station to spend thousands of dollars for contest prizes. 1/ It also serves to explain why Jack was willing to pour money into this station to the extent that as of September 30, 1960, Eleven Ten owed Broadcast Equipment \$388,429, including interest, on unsecured loans making the total indebtedness \$511,762^{2/} including accrued rental. Moreover, this understanding is also the only conceivable explanation of why part of the funds borrowed could be used to meet Eleven Ten's payments on its \$100,000 loan from Empire Trust Co., for which Don is personally liable.^{3/} In this connection, it is to be remembered that Don advanced the sum of \$110,000 because counsel thought he should.

6. In addition to the matters enumerated above, Jack participated actively with Don and counsel in the preparation of program exhibits which were filed with the assignment application. Almost from the commencement of Eleven Ten's operation of KRLA, Jack was at the station from time to time giving directions to the staff. When he was out of the city he directed that reports, to which only an owner is entitled, be mailed to him. After August 20, 1959, he became even more active in the day-to-day affairs of the station. His conception and execution of the Golden Key and Perry Allen

contests, and directions and assurances given by him to employees, including the program director, vividly demonstrate the extent to which Jack directly controlled the station's policies and programming. The Commission had been emphatically assured that both Don and Jack were aware that Jack, as an alien, could have no direct or indirect control over this station. However, it is apparent from this record that Jack had no intention of permitting these assurances to dictate his conduct.

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- 1/ For the period May 1, 1959, through September 30, 1960, Eleven Ten paid approximately \$4,000 out of a total rental of \$127,500. The balance has been accrued.
 - 2/ The findings show Broadcast Equipment paid \$553,680 for the physical facilities assigned to it by Eleven Ten.
 - 3/ The findings show that of the money borrowed, \$55,972 was paid on the principal and interest of this loan.

[1064]

7. We believe the findings amply support the conclusion that Jack always intended to exercise control over the operation of KRLA in direct wilfull contradiction of the representations made in the assignment application.

8. To conform to his promise Jack should have scrupulously avoided any contact with the station operation. See WORZ, Inc., 12 RR 1157 (1957). However, employees of the station took orders directly from Jack. A department head took his orders from Jack without question since he felt that Jack was in control. One employee at least realized that Jack's presence at the station raised serious questions from the Commission standpoint, since he ordered a staff member not to give information concerning Jack's participation to a Commission investigator. Additionally, Jack's signature was

erased from the vouchers of the two checks he had signed on behalf of Eleven Ten. We believe it is only reasonable to infer that the purpose of the erasure was to obliterate evidence of the control exercised by Jack over the affairs of Eleven Ten.

9. The Commission cannot grant a renewal of license and allow the arrangements between Jack and Don to continue. The findings of fact reflect that Jack has held the power to dictate, direct, govern and regulate the affairs and policies of Eleven Ten. See Rochester Telephone Corporation, 3 FCC 476, 491 (1936). We believe the findings also demonstrate that he has exercised that power. A licensee of the Commission under the Communications Act must be free from all restraints which hamper any degree of control over its station. Jack, by reason of the money he has advanced to Eleven Ten which is used not only to operate the station, but also to prevent a forfeiture by Eleven Ten under the loan arrangement with Empire Trust Company, unquestionably has the power to control Eleven Ten and the operation of KRLA.^{1/} There can never be a

^{1/} As the Circuit Court stated in WLOX Broadcasting Company v. FCC, 260 F2d, 712, 17 RR 2120, 2123: "... In our view it is wholly unrealistic to say that a stockholder who is to furnish all the money to his corporation for the construction of a television station and to take part in determining the necessity for advancing it as the work progresses, and is to furnish all the money for the first year's operation, receiving weekly financial statements and giving financial advice, is not in practical effect one of the 'principals' of the corporation." The Court further found that such control of the finances of a station would give the lender the power to "dictate the manner of operating the proposed station." 17 RR at 2123.

true lessor-lessee relationship when the lessee's continued existence is controlled so completely by the lessor as is here the case (see Press Union Publishing Co, Inc., 7 RR, 83, 86) (1951).

10. We conclude that the parties have engaged in willful violation of Section 310 of the Communications Act. We further conclude that Jack is and always has been the real party in interest in the assignment application.

12. We except to conclusion 4 as not supported by the findings in the Initial Decision, and as error as a matter of law. In lieu thereof, we urge the following conclusions:

11. The evidence establishes that the program representations set forth in the assignment application were not made in good faith. Don's real feelings concerning the programming promises made under oath are reflected in his memorandum to Heiman dated October 2, 1959. We learn from this document that the time devoted to agricultural programming, which had been described (in the assignment application) as essential for this market, was increased only because his counsel believed more time should be provided therefor. Don's lack of sincerity with respect to the proposed religious programming and his true feeling for this category of programming is expressed with clarity in this memorandum. One could find no better proof of Eleven Ten's intention to ignore its proposed programming than is contained in this memorandum. Corroborating this proof of Eleven Ten's lack of good faith is Schulz's memorandum dated October 15, 1959, to the employees of Donald Cooke, Inc., which was written with Don's full approval. In this memorandum Eleven Ten boasted that KRLA was the only radio station in Los Angeles whose programming consisted of disc jockey programming twenty-four hours a day, seven days a week, uninterrupted by "commercial" religion. Don's effort to

explain away this memorandum is ludicrous and lends emphasis to our conclusion that his entire testimony is untrustworthy.

12. Despite all of the concrete evidence to the contrary, Don testified in this proceeding that it had always been Eleven Ten's intention to fulfill the programming promises

[1066]

contained in its application for assignment of license. His testimony demonstrates either a complete lack of regard for the truth, or complete ignorance of the documents Eleven Ten has filed with the Commission. We say this since on November 15, 1959, Eleven Ten filed as an amendment to its renewal application a policy statement and proposed programming schedule, which on their face completely abandoned the programming promises made to the Commission in the assignment application, and sought Commission approval thereof. Considering the contents of this amendment it is incredible that Don could testify as he did.

13. As evidence of the good faith of its original promises, Eleven Ten, in response to the Commission's 309(b) letter of December 16, 1959, submitted an amendment to its renewal application on February 15, 1960, detailing its programming policy and the programs being broadcast up to that date. The findings show that even in this amendment Eleven Ten was misstating its policy and the nature and length of agricultural announcements. Its representation as to its policy of broadcasting 30 seconds of agricultural news on each of the 24 hourly newscasts was false, for the October 2, 1959, memorandum of Don's expressed a particular repugnance for such a policy. While the programs shown in the February 15, 1960, amendment as being broadcast conformed in many respects to those originally promised, practically all of them had been placed

on the air after Eleven Ten's receipt of the December 16, 1959, 309(b) letter questioning the good faith of their original programming promises. This letter literally catapulted Don into action. Immediately, a "crash" program was instituted to conform to Eleven Ten's original promises. The obvious reason for so doing was not Don's earnest desire to meet these promises, but rather to obtain a grant of his application for renewal of license without a hearing. We say this since Don's motives are reflected in his memorandum to Heiman of April 12, 1960, wherein he advised that one month after KRLA's license was renewed, "undoubtedly" KRLA could drop some of the Sunday religious and "public service" programming. In this memorandum Don told Heiman he already knew of Don's feelings concerning religious programming. This feeling could only be that which he expressed in his memorandum of October 2, 1959, to Heiman, wherein he stated "nothing would please me more than to remove the necessity of broadcasting a round table of churches in the 11:00 AM to 12:00 noon period Sunday."

[1067]

13. We except to conclusion 7, line 5, to the sentence commencing "It appears," as error as a matter of law. In lieu thereof, we urge the following conclusion:

"The carrying of these contests were willful deceptions of the public which cannot be condoned. Based on these facts alone we must conclude that the licensee of KRLA does not possess the necessary qualifications to continue as a broadcast licensee."

14. We except to conclusion 8, line 18, to the sentence commencing "While," as error as a matter of law and to the failure to conclude:

"Don had actual knowledge of facts which would have led an ordinarily prudent man to make a more extensive investigation. Hence,

the duty to make the further inquiry arose, and Don is charged with the full knowledge of the fact which such further inquiry would have disclosed." See U. S. v. Shelby Iron Co., 273 U. S. 571; Nettles v. Childs, 100 F2d 952, 957 (CA 4, 1939).

15. We except to conclusion 9 as not supported by the findings in the Initial Decision, and as error as a matter of law.

16. We except to the ordering paragraph as not supported by the findings in the Initial Decision, and to the failure to conclude, in lieu thereof:

"The Commission can not make the affirmative finding required pursuant to Section 309(a) of the Communications Act of 1934, as amended, that a grant of the applications of Eleven Ten will serve the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that the applications of Eleven Ten Broadcasting Corporation for renewal of license of standard broadcast Station KRLA, Pasadena, California and for license to cover construction permit are DENIED."

Respectfully submitted,
Kenneth A. Cox
Chief, Broadcast Bureau

by /s/ Robert J. Rawson
Chief, Hearing Division

/s/ Lewis I. Cohen
Attorney
Federal Communications Commission

July 21, 1961

[Rec'd July 21, 1961 - F.C.C.] [1069]

**BROADCAST BUREAU'S BRIEF IN SUPPORT OF
EXCEPTIONS TO INITIAL DECISION**

1. A comparison of the Bureau's proposed findings and the Initial Decision discloses that virtually all of our proposed findings were incorporated into the Initial Decision. We urge that these findings are irreconcilable

with the ultimate conclusion reached in the Initial Decision, that Eleven Ten's license should be renewed.

Programming Issue

2. The programming issue in the designation order states:

"To determine whether, in light of its operations since it acquired Station KRLA, the licensee's program proposals contained in its application for Commission consent to assignment of the license of Station KRLA (KXLA) (BAPL-171) were made in good faith."

(Emphasis supplied.)

The Initial Decision's conclusion concerning this issue rests upon a complete and basic misunderstanding of what this issue plainly says and

[1070]

obviously means. Initially, in resolving this issue, the Initial Decision in Conclusion 4 correctly held that one must look to the programming of the station following the assignment of license to Eleven Ten in order to determine whether the programming representations set forth in the assignment applications were made in good faith. This correct interpretation of the issue is stated in the conclusion as follows:

"Of necessity, the resolution of the issue requires a retrospective application of KRLA's operations to the question of intent at the time the applicant sought the Commission's consent to acquire the station's license".

However, the Initial Decision then proceeded to reject this interpretation in resolving the issue in the applicant's favor. We submit it was error to hold that the complete abandonment of the program proposals did not evidence bad faith. That this in fact is the rationale of the Initial Decision is demonstrated by its emphasis that "... there was no evidentiary showing relating to the time of filing the application ...". Predicated upon this erroneous premise, the Initial Decision resolved the issue in favor of Eleven Ten.

3. This construction of the issue flies in the face of both its plain meaning and applicable judicial precedents. The issue itself states that good faith is to be determined " . . . in the light of its operations since [Eleven Ten] acquired KRLA . . . ". There could be no clearer words in the English language to indicate that the programming of KRLA, letters written by Don and Schulz concerning this programming, and official documents concerning this programming filed by Eleven Ten

[1071]

with the Commission, must be considered in determining whether Eleven Ten's programming representations were filed in good faith.

4. The Initial Decision relates this issue to whether Eleven Ten's programming representations were imbued with fraud. In this connection, the Court of Appeals has stated:

"Fraud is rarely susceptible of direct proof, but must ordinarily be established by circumstantial evidence and legitimate inferences arising therefrom, which, taken as a whole, will show the fraudulent intent or purpose with which the party acted. The inferences to be gathered from a chain of circumstances depend largely upon the common sense knowledge of the motives and intentions of men in like circumstances. While fraud, and even intent, cannot be proven by mere suspicion, it may be established by such facts and circumstances from which reasonable men would infer that the transaction was fraudulent".

Philadelphia Storage Battery Co., 64 Fed. 2d 834, 837 (C.A. 8, 1933) cert. denied, 290 U. S. 651. See also Connolly v. Gishwiller, 162 Fed. 2d 428, 433 (C. A. 7, 1947) cert. denied, 332 U. S. 825. We urge the analogy between establishing fraud and proving good faith, is in point. Both relate to intent which, as noted above, is "rarely susceptible of direct proof". Precisely the evidentiary matter contemplated by the above decision in establishing fraud is the very evidence the Initial Decision has concluded is not material to the issue.

5. In incorrectly construing this issue so narrowly, it is significant to recognize that the Initial Decision used "an accordian theory" of interpretation. For in the log falsification issue, the Initial Decision concludes that KRLA's logs were falsified to deceive

[1072]

the Commission, and this conclusion is all that the issue requires. However, in construing the issue, the Initial Decision further concludes that the falsification cannot be imputed to Don. The vindication of Don and Eleven Ten is thus read into the issue. It is clear that the Initial Decision has construed the programming issue as strictly as possible and at the same time construed the falsification issue as liberally as possible. This, we submit, is error of the most grievous nature.

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[1074]

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7. In terms of the proof required under this issue in the designation order, the findings in the Initial Decision lead inevitably to the conclusion that Eleven Ten's programming proposals were not made in good faith.

[1075]

Log Falsification Issue

8. In resolving the log falsification issue in this proceeding, the Initial Decision concluded that the logs were altered improperly with the intent to deceive the Commission. The Initial Decision further concluded in Conclusion 8 that Don was " . . . neglectful of his duty properly to inform himself before reporting to the Commission . . . ". Yet the Initial Decision ultimately concluded that responsibility for the falsification may not be imputed to Don or to Eleven Ten. This conclusion, we submit, is in error. It should be rejected.

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Perry Allen Contest

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[1077]

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12. Accordingly, the Broadcast Bureau recommends that the Commission reverse the Initial Decision on this issue and hold, based on the record made on the contests alone, that the licensee of KRLA is not qualified to hold a broadcast license.

[1078]

The Allen Control Issue

13. Contrary to the conclusions of the Examiner the record and findings of fact reflect that Jack Cooke, an alien, acted in the capacity of an owner, executive head, and as the dominant controlling voice in the licensee of KRLA in (1) willful violation of Section 310 of the Communications Act, and (2) in direct, willful contradiction of the licensee's specific representations to the Commission.

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[1082]

24. Clearly then, under the facts and the law, it must be concluded that Jack Cooke, an alien, acted in the capacity of an owner, executive head, and as the dominant controlling principal of KRLA in willful violation of Section 310 of the Communications Act, and in direct willful contradiction of the licensee's specific representations to the Commission that Jack would "not participate in the ownership or control of [KRLA], either directly or indirectly, so long as he was a Canadian citizen . . ." (emphasis supplied).

[1083]

Short Term Renewal

25. The Initial Decision proposes a one year renewal of license for Eleven Ten because the Examiner was unable to "approve all of its behavior since it acquired Station KRLA ***." The Initial Decision further concluded that through the use of this procedure the Commission will be able to keep Eleven Ten under "surveillance."

26. However, we submit that the facts in this case go far beyond the point where the Commission can consider allowing Eleven Ten to continue as a licensee of the Commission. For not only has Eleven Ten willfully deceived the Commission, for example, as to the role that Jack would have in the licensee, but it showed contempt for and deceived the public, for example, in the carrying of the Perry Allen and Golden Key contests. This conclusion of disqualification follows not only from the Bureau's view of the facts but also just as surely from the critical conclusions made by the Examiner. For example, in resolving the programming issue, the Examiner stated " . . . The material departure, both attempted and realized, from the provisions made in the assignment application merit severe condemnation, as do Donald Cooke's programming instructions to his staff . . ." In connection with the Find Perry Allen Contest and the Golden Key Contest, the Examiner asserts that these " . . . contests represent a type of station operation which, if the broadcast industry is to continue maturing, should be relegated into oblivion." In resolving the log falsification issue, it is concluded that " . . . the KRLA program logs were altered improperly . . . with the only possible purpose [being] to deceive the Commission."

[1084]

27. The Initial Decision, in Conclusion 9, summarized its conclusions in these words:

"In sum, the haphazardly directed nature of the station's operations after the Commission was advised, as an inducement for approving the assignment, of definite operational plans; the frantic and undignified promotional activities, supplemented by some days of continuous programming which publicized contests and ignored the station's other obligations to the public; the obviously inept absentee direction marked by programming irresolution; and the failure of Donald Cooke adequately to inform himself regarding program mislogging prior to submission of his report to the Commission, all betoken censurable managerial immaturity and operational shortcomings."^{1/}

28. With this record of Eleven Ten before it, a record which reflects a disregard for the Commission, the station's licensee responsibilities, and most important, a disregard for the public which it was licensed to serve, it must be found that Eleven Ten does not possess the qualifications to continue as a licensee. FCC v. WOKO, 329 U. S. 223. Accordingly, the renewal application of Eleven Ten must be denied.

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July 21, 1961

^{1/} We have excepted to Conclusion 9 which contains this language. Our exception relates to the ultimate conclusion that Eleven Ten be granted a short term renewal and not to the particular language quoted above.

[1244]

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DECISION

By the Commission: Commissioner Cross concurring and issuing a statement.

1. Eleven Ten Broadcasting Corporation seeks renewal of license of standard broadcast Station KRLA (& Aux.) Pasadena, California, and a license to cover its construction permit authorizing 50 kw power. The applications were designated for hearing to determine (a) whether, in light of its operations since it acquired Station KRLA, the licensee's assignment application program proposals were made in good faith; (b) whether the licensee operated KRLA contrary to the public interest in light of the manner in which the "Find Perry Allen" contest was conducted; (c) whether the station's program logs were altered to deceive the Commission; (d) whether, since the assignment, Jack Cooke, an alien, has exercised control with respect to KRLA's operations contrary to Section 310 of the Communications Act of 1934, as amended, and the rules and regulations promulgated thereunder; and (e) whether in light of the evidence adduced pursuant to the foregoing issues, a grant of Eleven Ten's applications would serve the public interest, convenience or necessity.

2. The Initial Decision of Hearing Examiners James D. Cunningham and Herbert Sharfman (FCC 61D-53), released April 21, 1961, would grant both of Eleven Ten's applications but with renewal for a period of one year. Exceptions to the Initial Decision were filed by Eleven Ten and the Commission's Broadcast Bureau. The rulings on these exceptions are set forth in the appendix hereto. Eleven Ten disagrees with several of the Examiner's findings but acquiesces in the grant of the short-term renewal; the Bureau urges denial of both applications.

[1245]

The Commission heard oral argument on January 18, 1962; participating in oral argument were counsel for applicant and the Bureau. Subsequent to oral argument, Eleven Ten, on February 27, 1962, filed a petition to reopen the record.

3. The Examiner's findings have been considered in light of the exceptions filed, and they are adopted except as indicated herein and in our rulings on the exceptions.

4. It is not necessary to restate in detail the Hearing Examiners' findings of fact. It is clearly established that two contests conducted by Station KRLA - the Perry Allen contest and the Golden Key contest - were fraudulent in the sense that various clues which were broadcast over Station KRLA, were deceptive, and knowingly so.^{1/} Eleven Ten concedes that the conduct of these contests constitute "errors of judgment," but urges as a mitigating factor that the contests took place during "the frantic first days of a new operation". It further argues that there is no evidence that any listener was misled or deceived, and that prizes in both contests were paid to the winner. No effort, however, is made by Eleven Ten to equate the chicanery involved in these contests with responsible station operation, and, in our judgment, no such effort could successfully be made.

5. It is likewise well established in the Hearing Examiners' findings that KRLA program logs were altered improperly to reflect the broadcasting of short religious programs which, in fact, were not broadcast.^{2/} We agree with the Hearing Examiners' conclusion^{3/} that the only possible purpose of the alteration was to deceive the Commission. The Examiners also found, however, that Donald Cooke (the principal owner of Eleven Ten and its president) did not become aware of the log alterations until he received notice thereof from the Commission. Eleven Ten contends that such unawareness, together with the fact that there is no showing that Donald Cooke was careless in employing the personnel who were responsible for the alternations, precludes imputation to it of this intent to deceive the Commission.

6. The same contention might, of course, be advanced to absolve Eleven Ten of responsibility for the chicanery practiced in the Perry Allen and Golden Key contests since the Examiners' Findings indicate

that Donald Cooke was unaware of it and did not authorize it, and that among the persons he left in charge of these contests was his brother Jack -- a seasoned broadcaster from Canada. Inherent in such contention, however, is the view that a licensee who delegates to persons it deems responsible, authority to operate and manage a station cannot be held responsible for their activities if it is unaware of them. This is, of course, a completely untenable view. Retention of effective control by a licensee of the station's management and operation is a fundamental obligation of the licensee, and a licensee's lack of familiarity with station operation and management may reflect an indifference tantamount to lack of control. See Mile High Stations, Inc. (KIMN), 20 RR 345 (1960).

1/ See Findings of the Initial Decision, paragraphs 36-52.

2/ See Findings of the Initial Decision, paragraphs 99-103.

3/ See Conclusions of the Initial Decision, paragraph 8.

[1246]

7. That Donald Cooke did not at least prior to November of 1959,^{4/} manifest an effective sense of responsibility for station operation and management is clear from the Findings. Thus, Donald Cooke visited Los Angeles from April 29 through May 5, 1959, and again from August 12 through August 21, 1959. He left Los Angeles on August 21 despite the fact that only two days before he advised his brother Jack that Station KRLA "was a mess." Though by correspondence and telephone Donald Cooke maintained contact with station operation and management, its actual operation and control were variously left in the hands of his brother Jack and several station employees. Under these circumstances, the chicanery practiced in the two contests within two weeks after Donald Cooke left and the log alterations which were made two months after Donald Cooke left, cannot be dismissed as incidents which would occur even in the best-managed operations as a result of the defection of a

trusted employee. On the contrary, they are apt illustrations of what may be expected when the licensee does not maintain effective control and delegates control in fact to others. Only by holding a licensee responsible for the operation and management of a station, and only by insistence that the reins be held by the licensee, can there be any reasonable assurance of responsible station operation and management.

8. Though Donald Cooke was apparently unaware of the log alterations, it is clear from the Examiners' findings concerning KRLA's programming that Donald Cooke not only countenanced but also suggested ways in which changes might be made in KRLA's programming and yet be made to appear as conforming with the programming proposals made at the time of transfer and in the renewal application. The only restraint on him in this regard was the inhibiting fear that he might "run afoul" of the Commission or that the changes would not "pass muster" with the Commission. Thus, in an office memorandum of October 2, 1959,^{5/} Donald Cooke stated that he regretted that a farm report had been proposed for each newscast. In rejecting a suggestion that farm market reports be incorporated in the form of "tips to housewives", Donald Cooke in that same memorandum stated that he could not see how it would "help KRLA conform to its proposed broadcast schedule." His alternative suggestion was to include a 30 second farm market report on certain specific newscasts, but not on all newscasts; this, he thought "would fill the bill." He advised a member of his staff to give serious attention to this problem, because he was "not anxious to run afoul of the FCC." As indicated in paragraphs 68 and 70 of the Findings of the Initial Decision, the response of Schulz, the station manager, to this memorandum of October 2, 1959, was that a forty second market roundup would be broad-

^{4/} The Perry Allen and Golden Key contests were conducted early in September of 1959. The log alterations were made in the latter part of October of 1959.

5/ This memorandum is quoted in full in paragraph 67 of the Findings of the Initial Decision.

[1247]

cast twice a day; that there would be broadcast two two-minute "featur-ettes" a day, directed to housewives, explaining the "best buy" in produce; and this programming, it was stated, would fulfill KRLA's obligations to broadcast agricultural programs. Heiman, the station's production director, responded to Donald Cooke's memorandum of October 2, 1959, by stating that KRLA was "incorporating thirty seconds of a morning newscast to a Farm Fair . . . of interest mainly to the consumer rather than the farmer." Donald Cooke was apparently satisfied with these responses. It is clear that Donald Cooke, Heiman and Schulz had a common understanding that agricultural programs were, at best, a necessary evil; that ways and means were to be devised to cut back such programs to a bare minimum without running "afoul of the FCC"; and that programs designed principally for the consumer could be represented as agricultural programs.

9. In the assignment application, Eleven Ten stated that it planned to schedule each night at 10:40 P.M., Monday through Saturday, a program which would broadcast information concerning civic activities. In the memorandum of October 2, 1959, referred to above, Donald Cooke wondered whether "a public announcement in this [i.e., 10:45 to 11:00 P.M.] period without any commercial announcements . . . designates the entire 15 minutes as public service. If this is so, are both of you fellows [Heiman and Schulz] satisfied that we should not have to put a 15 minute talk in?" Schulz responded by stating that KRLA would insert one single minute public service spot announcement in a sustaining quarter-hour; the remaining 14 minutes would consist of playing the Top Forty tunes; and KRLA would log the entire 15 minutes as public service programming. Schulz stated that "we do not have to fill the entire 15 minutes with gab."

Apparently Donald Cooke acquiesced in these suggestions by Schulz, notwithstanding the fact that they included a deliberate plan to misrepresent the true character of the program which was to be broadcast.

10. On December 16, 1959, the Commission directed a 309(b) letter to Eleven Ten stating, in part, that Station KRLA was apparently not operated in conformity with the program proposals made by Eleven Ten in connection with the approval of the assignment application. Following receipt of this letter, Donald Cooke instructed his staff to initiate programs which had been proposed at the time the assignment application was considered but which had never been presented; these instructions were given so that Donald Cooke could include, in his response to the 309(b) letter, "a fulfillment of the promises" originally made by Eleven Ten.^{6/} On January 13, 1960, Eleven Ten requested an extension until February 15, 1960, to reply to the 309(b) letter because, among other reasons, Donald Cooke desired to " . . . personally verify the information which will be submitted in response to the Commission's inquiry which he cannot do without spending an extended period in California."^{7/}

^{6/} See paragraph 75 of the Findings of the Initial Decision.

^{7/} See paragraph 77 of the Findings of the Initial Decision.

11. On February 15, 1960, Donald Cooke, in response to the 309(b) letter, submitted program information ". . . which reflects the manner in which this station is carrying out its original representations made to the Commission at the time it requested approval of the assignment."^{8/} This information was submitted in the form of an amendment to the renewal application, and there was also submitted an analysis of the week of January 31, 1960, to February 6, 1960, prepared by Heiman. Donald Cooke was in Los Angeles this entire week, having arrived on January 22, 1960,

and remaining until February 10, 1960. As indicated in the Findings^{9/} of the Initial Decision, numerous misrepresentations are contained in these amendments. Thus, it was stated that a policy was initiated in October of 1959 to present at 5:55 A.M. and 1:55 P.M. (formerly at 11:55 A.M.) four and one-half minutes of newscasts "devoted to farm news;" in contrast to this statement, Schulz on October 5, 1959, advised Donald Cooke that there would be broadcast a "40-second market round-up in the 5:55 A.M. and 11:55 A.M. newscasts." It was also stated in the amendment that thirty seconds of agricultural news will be broadcast in every newscast, and that this policy has been fulfilled since January 8, 1960, although it "was not strictly adhered to prior to that date." Though the implication of this quotation is that even prior to January 8, 1960, it was the general practice to broadcast farm news in each newscast, such representation is in direct conflict with Donald Cooke's memorandum of October 2, 1959 (see paragraph 8 above), that farm news on two newscasts a day would be sufficient; it is in conflict with Heiman's statement of October 4, 1959, that the "farm" news to be broadcast was of interest mainly to the consumer; and it is also in conflict with Heiman's written statement of October 26, 1959, to Donald Cooke that agricultural news would be broadcast twice a day. In the February 15, 1960, amendment Eleven Ten included under the category of agriculture a program listed as "Best Buy of the Day"; Heiman subsequently admitted that the program could not properly be classified as agricultural. The February 15, 1960, amendment also classified as agricultural a Monday morning program called KRLA Farm Roundup. It was represented that it first appeared on January 11, 1960, and that it includes transcribed agricultural information consisting of comment by certain named agricultural experts. Perry Allen, the disc jockey who was on duty every Monday morning from five to six A.M. when this program was carried, testified that he did not recall having broadcast any of the transcriptions.

12. Each of these misstatements appeared in the February 15, 1960, amendments notwithstanding the fact that, as has been indicated, an extension of time for responding to the 309(b) letter was granted at

8/ See paragraph 80 of the Findings of the Initial Decision.

9/ See paragraphs 81 - 86 of the Findings of the Initial Decision.

[1249]

Donald Cooke's request so that he could "personally verify the information" to be submitted. In April of 1960, nearly two months after the February 15 amendments were submitted, Heiman proposed certain changes in the Sunday programming. In his response of April 12, 1960, Donald Cooke stated, in part, as follows:

"Just to confirm my feelings about the Sunday religious and public service programming, before doing anything, the following points should be answered in the affirmative:

1. Tommy Dowd [Eleven Ten's Counsel] should be consulted and should approve the move --

2. No move should be made until about a month after the

FCC has approved KRLA's request for its license renewal --

At that time, undoubtedly, we will be able to drop some of the present programming, but we will only do so with the full approval of Pierson Ball and Dowd, of course."

In explanation of this letter, Donald Cooke stated that he expected the license to be renewed before April 12, 1960, but that:

"The reason for the letter itself was we were coming into the summer months, and the schools, the public schools, the high schools and the colleges would no longer be in session, which would make it extremely difficult for us, if not impossible, to continue such shows as California, Topic Youth, and Seminar."

13. In its brief, Eleven Ten argues that its failure to effectuate its program proposals during the initial period of its operation is not a basis for refusing to renew its license. In this connection, it cites a number of Commission decisions to the effect that latitude must be afforded licensees in the early phases of operation. It also argues that it never abandoned its program proposals, and that the failure to carry out its program proposals does not necessarily imply that its program proposals were not made in good faith.

14. The ultimate question posed by the hearing issues is whether a renewal of Eleven Ten's license is in the public interest. In view of the evidence adduced pursuant to the hearing issues, the conclusion is inescapable that responsible management was not characteristic of Eleven Ten's operation of Station KRLA. In its early stages, Donald Cooke failed to maintain effective control of the station's operation and delegated actual control to his brother Jack and to station employees, and during that period the Perry Allen and Golden Key contests were conducted

[1250]

and the station's logs were altered. While, as we have indicated, even in the best-managed operation isolated instances of such practices could occur, this provides no defense to Donald Cooke's failure to assume effective control over the station's operation; so far as Donald Cooke is concerned, it is purely fortuitous that there were not many more instances of deception. After Donald Cooke assumed a greater interest in the details of station operation, he demonstrated a willingness to connive with station employees in various schemes to hoodwink the Commission into believing that KRLA's programming conformed with its program proposals. A similar effort to mislead the Commission as to KRLA's past programming was made in Eleven Ten's response to the Commission's 309(b) letter -- a response which was submitted following the granting of

Eleven Ten's request for additional time for filing a response so that Donald Cooke could "personally verify" its contents. Nearly two months after the response was filed, Donald Cooke indicated a willingness to drop certain programs proposed in the amended renewal application -- but in no event until after the renewal application was granted. This record of neglect, on the one hand, and of efforts to mislead the Commission, on the other hand, disqualifies Eleven Ten from being a licensee of the Commission, and its applications will, therefore, be denied. A willingness to deceive a regulatory body, even as to matters unimportant in themselves, warrants denial of a renewal application. Federal Communications Commission v. WOKO, Inc., 329 U. S. 223 (1939).

15. On February 27, 1962, Eleven Ten filed a petition to reopen the record. The Examiners were of the view that a one-year period of surveillance was essential to determine whether Eleven Ten can be relied upon to provide a meritorious service on a permanent basis. Eleven Ten points out that more than one year has elapsed since the hearing record was closed. It requests an opportunity to show that its programming in the last year has been meritorious, and it alleges that it has made extensive efforts to ascertain and meet the needs of the community it proposes to serve.

16. There may be cases in which it would be appropriate to reopen the record for the reasons advanced by Eleven Ten. This is not one of those cases. The efforts to distort the true character of KRLA's programming were not limited to the period prior to the time that the Commission called KRLA's attention to the fact that its programming was not in accord with its program proposals. KRLA made similar efforts in its response to the Commission's inquiry. Less than two months after its renewal application was amended, Donald Cooke indicated his willingness to drop certain of the proposed programs -- but not until after the license had been renewed. In its petition, Eleven Ten is, in effect, asking for one more chance. We find no mitigating circumstances which would warrant a grant of its request. It was disposed to

deceit in advance of any Commission inquiry; it was disposed to deceit at the time of the Commission inquiry; it was disposed to deceit in the programming it would present after renewal of its license. In view of

[1251]

this continued pattern of deception, a meritorious programming fare, which may have been presented while the disposition of its renewal application was still in doubt, does not provide any assurance that such deception would not subsequently be resumed. Under the circumstances, no useful purpose would be served by reopening the record to adduce evidence as to Eleven Ten's programming since the record was closed. See Federal Communications Commission v. WOKO, Inc., supra.

ACCORDINGLY, IT IS ORDERED, This 15th Day of March, 1962, That the petition to reopen the record, filed February 27, 1962, by Eleven Ten Broadcasting Corporation IS DENIED;

IT IS FURTHER ORDERED, That the above-captioned applications of Eleven Ten Broadcasting Corporation ARE DENIED; and

IT IS FURTHER ORDERED, That in order to enable Eleven Ten Broadcasting Corporation to wind up its affairs, it is AUTHORIZED TO OPERATE Station KRLA until April 16, 1962.

FEDERAL COMMUNICATIONS COMMISSION

/s/ Ben F. Waple
Acting Secretary

Released: March 19, 1962

*See attached Concurring Statement of Commissioner Cross.

APPENDIXRulings on Exceptions to the Initial DecisionExceptions of Eleven Ten Broadcasting Corporation

<u>Exception No.</u>	<u>Ruling</u>
1, 9, 55	<u>Denied</u> , as being of no decisional significance.
2	<u>Granted</u> , and par. 5 of the findings is corrected to show that the total consideration was \$900,000 plus the costs not to exceed \$115,000 involved in the construction of the 50 kw facilities.
3	<u>Granted in substance</u> , and footnote 3 and par. 5 of the findings are completed with the finding that the facts herein are complete and appeared in the assignment application.
4, 16	<u>Denied</u> . The requested findings were, in essence, made by the Examiner. (See par. 22 of findings.)
5	<u>Denied</u> , as immaterial.
6	<u>Granted in part and denied in part</u> . Paragraph 10 of the findings is completed with the additional finding that Donald has been interested in purchasing a radio station for years but because of financial considerations was unable to do so. The remainder of the requested findings are denied as cumulative in nature.
7	<u>Denied</u> . The requested findings are either cumulative or irrelevant.
8	<u>Granted</u> . The record does not support an inference that the price formula for the purchase of the station was developed by the Cookes' counsel.

<u>Exception No.</u>	<u>Ruling</u>
10	<u>Granted in part and denied in part.</u> Paragraph 14 is modified to reflect that Donald testified under oath that he intended to carry out the public service programs proposed in the schedule. The remainder of the requested findings were either made or are too vague. (See par. 62 of the findings.)
	[1253]
11	<u>Denied</u> , the requested findings are conclusionary.
12	<u>Granted</u> , and par. 16, sentence 6, is modified to show that the testimony was under oath.
13	<u>Denied</u> . The requested finding is conclusionary.
14	<u>Denied</u> . See pars. 24 and 26 of the findings.
15	<u>Granted in substance</u> , and par 17 of the findings is modified to show that Donald also discussed policies and operational problems with Loyal King who stayed on at KRLA as general manager, and that Donald corresponded with King and issued various instructions to him throughout his tenure as general manager. (However, see ruling on Eleven Ten Exception 31 and others considered therewith.)
17	<u>Granted in part and denied in part.</u> Paragraph 18 is modified to show that Donald set out to hire a new program director and that he had knowledge of the Station WKY operation at Oklahoma City, and sought out Bill Wheatley, its program director. The remainder of the requested findings are of no decisional significance. (However, see ruling on Eleven Ten Exception 31 and others considered therewith.)

<u>Exception No.</u>	<u>Ruling</u>
18	<u>Granted in part and denied in part.</u> Paragraph 18 is modified to the extent of showing that Donald hired Wheatley and subsequently informed Jack to that effect. The remainder of the requested findings are cumulative in nature. (However, see ruling on Eleven Ten Exception 31 and others considered therewith.)
19	<u>Denied.</u> There is no evidence of any such discussion. The remainder of the exception is denied because the Examiner's findings are adequate.
20	<u>Denied.</u> The requested finding is not relevant at this point. However, see ruling on Eleven Ten Exception No. 28.
[1254]	
21, 37	<u>Denied.</u> The Examiner's findings are adequate and not misleading.
22	<u>Granted,</u> and the term "however" in par. 19, sentence 3 of the findings is deleted.
23, 24	<u>Granted in part and denied in part.</u> Paragraph 19 is modified to show that (a) Donald was informed that Wheatley had excellent experience in the area of modern radio operation and seemed to be especially suitable for Donald's objective in the programming of KRLA; and (b) Wheatley understood Donald's objective for KRLA and saw nothing inconsistent between a "Top Forty" operation and talk and cultural programming.
25, 26, 27	<u>Granted in substance,</u> and par. 20 of the findings is modified to show that (a) without consulting Jack, Donald contacted several persons as possible station

Exception No.Ruling

- managers; (b) Donald hired Schulz after having met him notwithstanding Jack's reservations as to Schulz's suitability; and (c) Donald immediately corresponded with Schulz and sent him the program schedule and policy submitted to the FCC and that he stated that the program schedule will be " . . . similar to that which we submitted to the FCC. It will be closely related to the one submitted to the FCC, but it cannot be identical." (However, see ruling on Eleven Ten Exception 31 and others considered therewith.)
- 28 Granted in substance, and par. 21 is completed with the additional findings that prior to the time Wheatley took over as program director, Donald sent him the program schedule and preamble submitted to the FCC with the transfer application and that Donald pointed out that, while there might be some minor changes from the schedule submitted to the Commission, the actual program service would be "similar" and "closely related" to that proposal. The same information was made available to Schulz. (However, see ruling on Eleven Ten Exception 31 and others considered therewith.)

[1255]

29

Granted in substance, and par. 22 is modified to show that the policy concerning spot announcements pertained only to the transition period; that when Eleven Ten took over KRLA the station's income was largely from commercial religion and remotes from area night clubs;

Exception No.Ruling

- and that the new management's initial efforts were devoted to selection of a staff and creation of a proper physical setup. The remainder of the requested findings are cumulative.
- 30 Granted in part and denied in part. Paragraph 23 of the findings is modified to reflect that within a week after his arrival, Wheatley cancelled commercial religious programs and programs emanating from night clubs, such cancellations being in accord with the transfer application. The remainder of the requested findings are cumulative.
- 31, 32, 33, 56, 66, 69, 70, 81, 82, 87, 91, 98, 99, 100, 101, 107, 131 Granted, and the additional requested findings are made. These findings indicate the extent to which Donald Cooke participated in and maintained contact with station operation and management, and they are recognized collectively in par. 7 of the Decision. However, taken as a whole, these facts do not evidence a degree of participation sufficient to alter our conclusion in paragraph 14 that Donald Cooke did not exercise effective control over station operations.
- 34 Denied, as cumulative.
- 35 Granted, and par. 24 of the findings is modified to reflect that in connection with their work in sales reports, Dobson knew that Jack was relaying Donald's wishes. (However, see ruling on Eleven Ten Exception 31 and others considered therewith.)
- 36 Granted, and the repetitious findings are deleted.

<u>Exception No.</u>	<u>Ruling</u>
38	<u>Granted</u> , and the word "reports" in the sentence in par. 24 of the findings beginning "In these visits . . ." is deleted.
39	<u>Granted</u> , and par. 24 is completed with the additional requested findings.
[1256]	
40	<u>Granted in part and denied in part</u> . Footnote 11 of the findings is completed with only the factual recitations contained in Appendix A attached to Eleven Ten's Exceptions. However, see ruling on Eleven Ten Exception 31 and others ruled on therewith. The remainder of the requested findings are conclusionary.
41	<u>Denied</u> . The requested finding is conclusionary.
42	<u>Denied</u> . The finding accurately states that he approved the purchase -- and not the jingles themselves -- before he heard them.
43	<u>Granted in part and denied in part</u> . Paragraph 25 of the findings is modified to reflect that Donald was present at the Los Angeles recording session and that after having heard part of the jingles he told Wheatley he hoped that the others were better; that Jack claims to have heard and disapproved of some jingles other than the Dallas jingles during his July 9-23 visit; and, that Wheatley, however, claims that Jack's disapproval was directed at the Dallas jingles and was expressed before August 20, but after the August 17 recording session. (However, see ruling on Eleven Ten Exception 31 and others considered therewith.)

<u>Exception No.</u>	<u>Ruling</u>
44	<u>Denied.</u> Although Donald was in Pasadena after the closing of the transfer, the records does not disclose a studio visit during that time.
45	<u>Denied.</u> Failure to make the requested finding does not support a reverse inference.
46, 47, 49, 51	<u>Granted,</u> and the findings are completed with the additional requested findings. However, see ruling on Eleven Ten Exception 31 and others considered therewith.)
48	<u>Granted in part and denied in part.</u> Paragraph 28 is completed with the additional finding that Donald had decided over Jack's objection to fire the announcers while Schulz suggested that some be fired and some retained. The remainder of the requested findings are denied. (See ruling on Bureau Exception No. 1. Also see ruling on Eleven Ten Exception 31 and others considered therewith.)

50	<u>Denied.</u> Wheatley's testimony is not inconsistent.
52	<u>Denied.</u> The quotation marks do not characterize the evidence.
53, 103	<u>Denied.</u> The Examiner's findings are adequate.
54	<u>Denied.</u> The requested finding is conclusionary.
57	<u>Denied,</u> as irrelevant.
58	<u>Denied.</u> The specific issue on the Perry Allen contest was designed to adduce evidence to aid in determining whether Eleven Ten operated KRLA for improper purposes. Evidence concerning any other questionable contest conducted by KRLA is material for the same reason.

<u>Exception No.</u>	<u>Ruling</u>
59	<u>Granted</u> , and par. 36 is modified to reflect that the "Golden Key" contest was conceived by Jack and others. Also, the title preceding par. 35 is deleted.
60	<u>Granted in part and denied in part.</u> Paragraph 39 is completed with the additional findings that the clues were ambiguous and could have applied to any location in Los Angeles. The remainder of the requested findings are either cumulative or unsupported by the record.
61, 62	<u>Granted in substance</u> , and pars. 39 and 41 are completed with the additional finding that (a) Wheatley knew the location of the Key when the clues were worth \$40,000; (b) Wheatley testified that the clues were definite enough at the value of \$20,000 -- 8 a.m., Monday, September 7, 1959, the day the Key was found -- for someone to have determined the Key's location; and (c) the clues written by Wheatley while he was unaware of the Key's whereabouts were most ambiguous and were, therefore, applicable but only in the sense that the Key could have been anywhere.
63	<u>Granted</u> , and par. 41 is completed with the finding that Donald approved of the allocation of \$50,000 for the contest.
[1258]	
64	<u>Denied.</u> The circumstances under which Jack signed the check are irrelevant.
65	<u>Denied.</u> The origin of the \$200 check is irrelevant.

<u>Exception No.</u>	<u>Ruling</u>
67	<u>Denied</u> , The requested findings are conclusionary.
68	<u>Denied</u> . The requested findings are conclusionary.
71, 73, 78	<u>Granted</u> . However these findings while they supply further detail about the circumstances in which the Perry Allen contest was held do not disturb the Commission's conclusions concerning the conduct of the contest.
72	<u>Denied</u> . The Examiner's finding is accurate and not misleading. Further, no adverse inference is drawn from the use of the term "Top Forty".
74, 76, 85	<u>Denied</u> . The Examiner's findings are adequate.
75	<u>Denied</u> , as immaterial.
77	<u>Denied</u> , as immaterial.
79	<u>Denied</u> . Referenced expression does not appear in cited paragraph of the findings.
80	<u>Granted in part and denied in part</u> . The requested findings are made except for that finding which states there is no doubt that KRLA intended to pay the winner of the contest since the record does not support a finding that the station intended to pay the full amount of the prize originally offered.
83, 122	<u>Granted</u> . See par. 4 of the Decision.

[1259]

84	<u>Denied</u> . Failure to make the requested finding does not support a contrary inference.
86	<u>Denied</u> . However, the last sentence of paragraph 59 of the Findings is modified by substituting "testified under oath" for "however, insists."

<u>Exception No.</u>	<u>Ruling</u>
88	<u>Denied.</u> The challenged finding is not misleading. Also see par. 80 of the Findings.
89	<u>Denied.</u> The challenged finding is accurate, and the requested finding was made by the Examiner. (See par. 23 of the Findings.)
90	<u>Granted in part and denied in part.</u> The challenged finding is adequate and not misleading. The requested finding has been made. (See ruling on Eleven Ten's Exception No. 28.)
92	<u>Granted in part and denied in part.</u> All the requested findings are made except for those in the second and third statements, such statements being opinion testimony only.
93	<u>Granted in part and denied in part.</u> The last sentence is not supported by the record.
94	<u>Granted</u> to the extent of finding that in addition to the basic ingredient of music, Eleven Ten Exhibit 2 also refers to religious, agricultural, education and community service programming.
95	<u>Granted</u> and paragraph 66 of the findings is clarified as requested by the exception.
96	<u>Denied.</u> Denied in part as inconsistent with Exceptions 94 and 95, both of which were granted.
97	<u>Denied.</u> The findings are accurate and not misleading.
102	<u>Granted in substance,</u> and the word "However" in the last sentence is deleted.
104, 105	<u>Granted in substance,</u> except for part (a) of Exception 105 (see par. 101 of the Findings).

<u>Exception No.</u>	<u>Ruling</u>
106	<u>Denied.</u> The findings are adequate and do not conflict with the ruling on Eleven Ten's Exception No. 105. The requested findings are also partly cumulative and partly irrelevant.
[1260]	
108	<u>Denied.</u> However, par. 77 of the Findings is modified to include the whole text of the January 13, 1960, letter.
109, 113, 124	<u>Granted,</u> and the requested corrections are made.
110	<u>Denied.</u> The matter excepted to was included as part of Exhibit B to paragraph 7 of Section IV of the amendment to the application. Official notice of this amendment was taken. Tr. 1015.
111	<u>Denied.</u> However, "approximately" is inserted after "initiated" in par. 82 of the Findings.
112	<u>Denied.</u> The Examiner's findings in paragraph 82 note the contrast between the statement quoted in paragraph 81 of the Findings and the letter referred to in paragraph 82 of the Findings.
114	<u>Denied,</u> as immaterial.
115	<u>Denied.</u> "Public service" programs and "agricultural programs" have been used as terms of art throughout the proceeding.
116, 117	<u>Denied.</u> The challenged findings are accurate.
118	<u>Denied,</u> as of no decisional significance.
119	<u>Denied,</u> as lacking specificity.
120	<u>Denied.</u> However, the challenged sentence is modified to show that what was meant was that Donald's explanation would explain only the discontinuance of the program Seminar.

<u>Exception No.</u>	<u>Ruling</u>
121	<u>Denied.</u> The letter indicates that Perry Allen was not required to be in Los Angeles during part of the time of the Perry Allen contest; however, the quotation marks are deleted.
123	<u>Granted,</u> and footnote 35 of the Findings is deleted.
125	<u>Denied.</u> The Examiner's findings are adequate and not misleading.
126, 127	<u>Denied.</u> The finding is accurate, and Exception 126 is argumentative.
[1261]	
128	<u>Denied.</u> The challenged finding is adequate.
129	<u>Granted,</u> and paragraph 100 of the Findings is corrected to reflect that Donald does not remember specifically whether he questioned Heiman but that he remembers questioning Schulz thoroughly.
130	<u>Denied.</u> The requested finding was made.
132	<u>Denied,</u> as immaterial.
133	<u>Granted in part and denied in part.</u> The first portion of the first requested finding is denied since there is no reference to Heiman's statement as an affidavit. The final portion of that requested finding is denied as immaterial. The remainder of the requested findings are made. However, see pars. 6 and 7 of the Decision.
134	<u>Granted,</u> and footnote 39 is completed with the requested finding. However, see pars. 6 and 7 of the Decision.

<u>Exception No.</u>	<u>Ruling</u>
135	<u>Granted in substance</u> , and par. 54 of the Findings is completed with the finding that any of Wheatley's testimony concerning Jack's possible exercise of control over KRLA is based upon his surmises and opinions.

Exceptions of the Broadcast Bureau

1	<u>Denied</u> . However, par. 28 of the Findings is completed with the additional finding that Jack directed the search for new disc jockeys. (See Eleven Ten Exhibit 13.)
2	<u>Denied</u> , as of no decisional significance.
3	<u>Granted</u> , and the phrase "nothing but" is inserted after the word "broadcasting" in line 2, par. 37 of the findings.
4	<u>Denied</u> . The record does not support the requested finding.
5	<u>Denied</u> , for failure to cite specific record references in support (See Section 1.154 of the Rules).

[1262]

6	<u>Denied</u> . However, par. 79 of the Findings is completed with the additional finding that Fry recognized Schulz's signature and notarized the affidavit at Donald's request.
7	<u>Denied</u> . The Examiner's findings are adequate.
8	<u>Granted</u> . (See ruling on Eleven Ten's Exception No. 129.)
9,10,11,12,14	<u>Denied</u> , as unnecessary to final result reached.
13	<u>Granted</u> , to the extent reflected in the Decision.
15	<u>Granted</u> , to the extent reflected in the Decision.
16	<u>Granted</u> , as reflected in the Decision.

[1263]

CONCURRING STATEMENT OF COMMISSIONER CROSS

In my opinion, the evidence clearly establishes that Jack Kent Cooke, while still a Canadian citizen, did exercise effective control of Station KRLA from August 21 to September 14, 1959. Accordingly, I disagree with the majority to the extent they failed to so find. This was a violation of Section 310 of the Communications Act and of the Commission's Rules. Moreover, it was done despite prior assurances to the Commission by the applicant, Donald Cooke, made at the time the Commission was considering the transfer of KRLA to Donald Cooke, that his wealthy brother Jack could not participate in the ownership of KRLA either directly or indirectly so long as he was a Canadian citizen. Furthermore, it was during the period while Jack Cooke was exercising control of KRLA that the two rigged promotional prize contests (Golden Key and Find Perry Allen) were conducted by KRLA.

The unanswered question in my mind is: was this unlawful control by Jack Cooke a willful violation or was it (as claimed by the applicant) the result of unforeseen and deteriorating economic circumstances that motivated the protective instinct of one brother for the other -- a characteristic as old as man. All through the record of this case there are illustrations of the older and richer brother, Jack, helping his poorer kid brother, Donald. It was Jack who had the broadcasting experience and it was Jack who put up most of the purchase money (over \$500,000) for buying KRLA. Donald mortgaged practically everything he owned to get \$110,000 toward the KRLA purchase and, even so, \$100,000 of this was borrowed from a bank with wealthy brother Jack guaranteeing the loan. The Commission was aware of these financial arrangements at the time it approved the transfer of KRLA to Donald Cooke.

While I cannot condone or excuse the unlawful or reprehensible operations of KRLA under Jack Cooke's stewardship during the period noted above, I would be inclined to accept the applicant's explanation and temper justice with mercy under the circumstances if these were the only violations involved. However, there also were other violations, i.e., the falsified logs and the failure of the applicant to carry out his program proposals.

The admitted log alterations are explained by the applicant as having been done in his absence and without his knowledge or consent. Moreover, the applicant claims that he, as well as the Commission, was lied to and deceived by his trusted employee in this matter. As regards the failure to carry out his program proposals, the applicant testified that he intended to carry out those proposals but financial losses and operational inadequacies prevented him from doing so.

In my view, all of these things added together indicate a pattern of operation by KRLA that was based primarily on expediency and had little or no regard for the law or the Commission's rules. Although a short term license plus an admonition to "Go, and sin no more" might be indicated for some of the violations, the aggregate pattern makes it impossible for me to make the public interest finding necessary to grant the license renewal. I therefore concur with the majority, i.e., I would reverse the Examiner and not renew the license.

[1294]

[F.C.C. Received April 18, 1962]

PETITION FOR RECONSIDERATION
AND/OR REOPENING OF THE PROCEEDING

Eleven Ten Broadcasting Corporation (KRLA), applicant in the above-entitled proceeding, pursuant to the provisions of Section 405 of the Communications Act of 1934, as amended, hereby respectfully requests reconsideration of the Commission's Decision released March 19, 1962.^{1/}

Introductory Statement

The Commission's Decision released March 19, 1962, reversed an Initial Decision of Examiners Cunningham and Sharfman which recommended the renewal of KRLA's license for one year. Our request for reconsideration is premised upon the following errors contained in the Commission's Decision:

1. Certain basic findings of fact made by the Commission are not supported by facts of record.

1/ By Order, the Commission stayed the effectiveness of its Decision until thirty days following the release of the disposition of the instant petition.

[1295]

2. The Commission failed to make certain basic findings of fact which are established by the record and essential to a proper decision.
3. The conclusions in the Commission's Decision do not logically flow from the basic findings made by it and are contrary to the evidence of record.
4. The Commission has premised its decision in substantial part upon issues raised by it for the first time in its Decision and concerning which KRLA was not put on notice, as required by Section 309 of the Communications Act of 1934, as amended.
5. That even upon the basis of the findings made by the Commission, the denial of KRLA's application for renewal reflects an arbitrary and capricious application of a double standard of license responsibility when this denial is contrasted to the Commission's recent grant of renewal of licenses to certain stations of Westinghouse Broadcasting Co., Inc., ^{2/} its recent action in connection with the

contest conducted by WNOE, New Orleans,^{3/} and other similar actions of the Commission.

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[1297]

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Finally, the Commission reached its ultimate conclusion, upon the basis of substitute issues upon which KRLA had not been notified, but which the Commission framed, evaluated and ruled upon for the first time wholly within the scope of its final Decision. These two substitute issues may be summarized as follows: (1) Whether Donald Cooke, following acquisition of the station, connived with his employees to misrepresent to the Commission the true nature of the station's operations; and (2) Whether Donald Cooke, following acquisition of the station, evidenced such a small degree of participation in the affairs of the station sufficient to support a conclusion that he exercised ineffective control of the station's operations. Aside from the fact that the addition of these two substitute issues without notice to the applicant clearly constitutes procedural error, as shown hereafter, the conclusions the Commission reached in connection with these two substitute issues do not even flow logically from the evidence cited by the Commission in support thereof.

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[1308]

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21/ Donald Cooke left Los Angeles for compelling family and personal reasons which were explained off the record to the Examiner and counsel for the Broadcast Bureau. While the offer was made to place the explicit reasons in the public record, it was requested that this not be done unless opposing parties deemed it necessary. Under these circumstances, no unfavorable innuendo as to "indifference" can or should be drawn from this fact. If the Commission desires to overrule the Examiner in his evaluation of this act, it should have available to it all of the evidence which can be made available upon the rehearing.

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34/ Counsel for KRLA has personal knowledge of the efforts that were made to compile a complete and accurate response to the Commission's letter of December 15, 1959. It is believed that any accurate review of the evidence will show that the foundation for the conclusion (i.e., numerous misrepresentations) does not in fact exist. However, it is submitted that even if the two agricultural programs were in fact inaccurately described, the conclusion of malicious intent would be unwarranted. The representations made in the 309(b) response were believed to be true and correct when filed and were based upon the descriptions and information furnished by the staff and as of that date there was no reason to doubt the truth. The issue here presented is not whether the statements were in fact accurate but whether the statements were made with a deliberate intent to mislead. This issue was never framed until the final decision, is not supported by the evidence, and is highly prejudicial to the applicant. Here again, restrained by the admonitions of Canon 19 and the absence of any notice of the issue of intent, Counsel did not offer to testify as to the facts surrounding the preparation of this amendment. It now appears such testimony may be necessary to avoid a manifest injustice and unless the Commission rephrases its conclusions a rehearing is required not only to eliminate the procedural error which exists with respect to this issue, but also to enable the applicant to present relevant evidence not previously available.

APPENDIX A

[FCC, Received 4/18/62]

ELEVEN TEN BROADCASTING CORPORATIONKey to Reconstituted Findings of Fact:

A conscientious attempt has been made to translate the Commission's rulings into meaningful findings and in the event of duplication of findings on the same subject, only one finding was made. The underlined matter constitutes additional findings made by the Commission. This reconstruction is based only on rulings granting the exceptions of both the Broadcast Bureau and KRLA. As shown hereafter, KRLA does not concede the correctness of the rulings denying some of its own exceptions, but these matters are not included in the reconstituted Initial Decision. A double line under the text indicates that the matter was originally underscored in the Decision. The numbers in parentheses following added findings pertain to exceptions upon which these changes are based.

[1336]

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In re Applications of)	
ELEVEN TEN BROADCASTING CORPORATION	)	DOCKET NO. 13622
Pasadena, California	)	File No. BR-1189
For Renewal of License of)	
Standard Broadcast Station KRLA & Aux.)	
For License to Cover Construction	)	DOCKET NO. 13623
Permit (BP-11,700)	)	File No. BL-7701

Appearances

Messrs. Thomas N. Dowd, William S. Green (Pierson, Ball & Dowd)
and Peter Campbell Brown (Manning, Holinger & Shea) for the applicant;
and Messrs. Robert J. Rawson, Thomas B. Fitzpatrick, and Lewis I.
Cohen for the Commission's Broadcast Bureau.

INITIAL DECISION OF HEARING EXAMINERS
JAMES D. CUNNINGHAM AND HERBERT SHARFMAN

Preliminary Statement

1. The applications of Eleven Ten Broadcasting Corporation for renewal of license of standard broadcast Station KRLA, Pasadena, California, and for license to cover construction permit, were designated for hearing by order released July 5, 1960, upon the following issues:

1. To determine whether, in light of its operations since it acquired Station KRLA, the licensee's program proposals contained in its application for Commission consent to assignment of the license of Station KRLA (then KXLA) (BAPL-171) were made in good faith;
2. To determine whether, in light of the manner in which the "Find Perry Allen" contest was conducted by Station KRLA in and about September, 1959, the licensee operated said station for improper purposes contrary to the public interest;

3. To determine whether the station's program logs for the week of October 18-24, 1959, were altered with the intent and purpose of deceiving the Commission.

[1337]

4. To determine whether, since the date of assignment of license of Station KRLA (formerly KXLA) to the licensee, Jack K. Cooke, a Canadian citizen, has exercised control with respect to the operations of said station contrary to the provisions of Section 310 of the Communications Act of 1934, as amended, the Commission's rules and policies promulgated thereunder;

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether a grant of the above-entitled applications would serve the public interest, convenience or necessity.

2. Prehearing conferences were held on October 3 and October 28, 1960. The hearing began in Los Angeles, California, on October 31, 1960, and continued through November 9, 1960. A final hearing session was held in Washington on December 22, 1960, when the record was closed. Proposed findings of fact and conclusions were filed by applicant and the Broadcast Bureau on March 13, 1961. At the conference of October 28, 1960, counsel consented to the presiding Hearing Examiner's association with another Hearing Examiner of the Commission in the preparation of the Initial Decision.

Findings of Fact

3. On October 22, 1958, there was filed with the Commission an application to assign the license of Station KRLA,^{1/} Pasadena, California, from Pacific Coast Broadcasting Company (Pacific) to Eleven Ten Broadcasting Corporation (Eleven Ten).^{2/} Donald Cooke (Don) a United States citizen was and is the sole stockholder of Eleven Ten. Under the original terms of this assignment application, Eleven Ten was to acquire only the license of KRLA, and a company named Broadcast Equipment Corporation

(Broadcast Equipment) was to acquire all of the physical assets of KRLA.^{3/}
Broadcast Equipment was and is owned by

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- 1/ On August 31, 1959, the call letters of KXLA were changed to KRLA. Throughout, the station will be referred to as KRLA.
 - 2/ All of the assignment application and associated material was incorporated by reference by ruling of the Hearing Examiner.
 - 3/ By a purchase agreement of October 10, 1958, between Don and Pacific, Don was given an option to acquire all of the assets of Pacific. Don then assigned his rights in the agreement to Eleven Ten. Subsequently, Eleven Ten notified Pacific it elected to exercise the option and that it had assigned to Broadcast Equipment the right to acquire the physical property, land and transmitter leasehold of Pacific. The facts herein are complete and appeared in the assignment application. [3]

[1338]

Donald Cooke's brother, Jack Kent Cooke (Jack), who was a citizen of Canada at the time of this hearing.^{4/} Broadcast Equipment was committed to purchase from Pacific all of the latter's physical equipment, land and transmitter site leaseholds for \$553,680, plus an amount equal to any cost expended by Pacific for the construction of its newly authorized 50 kw facilities up to the time of the purchase, and to assume and perform all contracts of Pacific for such construction.^{5/} Broadcast Equipment was required at its own cost to install any and all equipment and facilities necessary to enable KRLA to operate with its new facilities. By agreement, Broadcast Equipment was to lease these physical facilities to Eleven Ten for a period of 10 years at a rental of \$50,000 a year.

4. Broadcast Equipment held an option, good until November 21, 1965, to purchase all the stock of Eleven Ten for \$250,000. Its option was to be exercised by Broadcast Equipment or its assignee only when it or its assignee possessed the necessary qualifications to be a licensee of a broadcast station. The option expressly provided that until the purchase of the stock or the transfer of the license, "Broadcast Equipment,

its assignee, employees and agents shall not directly or indirectly control, supervise, direct, or attempt to control, supervise or direct the operation of Radio Station KXLA."

5. The total consideration to be paid to Pacific was \$900,000, plus the costs not to exceed \$115,000 involved in the construction of the 50 kw facilities. Broadcast Equipment paid Pacific \$553,680 for certain physical assets, leaving a balance of \$346,319 to be paid by Eleven Ten for assets which would include \$246,319 in cash derived from the sale of securities owned by Pacific. This \$246,319 was to be applied to reduce the sum paid by Eleven Ten to \$100,000, which was the amount already deposited by Eleven Ten in escrow against the purchase price. Don's source of funds was as follows: He was to pay \$10,000 for the stock of Eleven Ten from money acquired by him in the ordinary course of his business. Eleven Ten, with the individual guarantee of Don,

4/ Jack Kent Cooke is the beneficiary of Private Law 86-486, 86th Congress, H. R. 8156, approved September 14, 1960, providing that he should "be held and considered to have been lawfully admitted to the United States for permanent residence on September 28, 1953" A Canadian citizen at the time of the hearing, he there testified to his intention to become an American citizen "in a matter of weeks." He has very extensive Canadian business interests. Jack had also been interested in investing in broadcast property in the United States, but was advised by his attorneys he could not own an American radio station because of his Canadian citizenship. He owns 100 per cent of the stock of CKEY, Toronto, and for 11 years has been consultant to CKOY, Ottawa. He is not shown now to be an American citizen.

5/ On November 12, 1958, a construction permit was issued to Pacific authorizing KRLA to increase power from 10 to 50 kilowatts, daytime. Official notice is taken of this action.

obtained a loan of \$100,000 from the Chase Manhattan Bank. The Royal Bank of Canada offered to purchase the note of Eleven Ten at any time Chase Manhattan wished to sell it. Chase Manhattan was to call upon

the Royal Bank of Canada to purchase the note of Eleven Ten. Jack orally agreed to hold the Royal Bank harmless, thereby precluding any possibility of a default judgment being entered against Eleven Ten.^{6/} [2]

6. On January 28, 1959, the Commission addressed a Section 309(b) letter to Don and Pacific raising the question whether the real party in interest in the assignment was Jack, since substantially all the money needed to finance the purchase was to be furnished directly or indirectly by Jack. It also questioned " . . . whether the public interest is served by a grant of a license to one who has committed himself prior to such grant to a transfer of control of the licensee."

7. To justify a grant of the assignment application as originally filed, Don submitted a letter on February 14, 1959, in which he stated, among other things:

"In order that our answers may be considered in their proper perspective, it appears desirable at the outset to briefly review the general background of the proposed acquisition of KXLA as set forth in our application. Donald R. Cooke, an American citizen, became interested in acquiring Radio Station KXLA, Pasadena, California. This station was available for purchase at a cash price of approximately \$900,000. Since a cash purchase price of this amount was beyond Donald's own personal financial resources, he discussed the matter with his brother, Jack Kent Cooke, a Canadian citizen, and a person of considerable financial means. The two brothers recognized from the outset that Jack as a Canadian citizen could not own, control or participate to any significant extent as an equity owner in an American broadcast station because of the restrictions upon alien ownership and control as set forth in Section 310 of the Communications Act. However, Jack was willing to render financial assistance to his

brother if a way could be found to do so, which on the one hand, would be prudent from a business viewpoint, and, on the other hand, would satisfy all requirements of the Federal Communications Act . . . "

6/ Jack had previously helped out his brother financially in the organization of Don's firm, Donald Cooke, Inc. (see below).

[1340]

In addition, Don stated:

" . . . it was recognized that Jack could not participate in the ownership or control of KXLA, either directly or indirectly, so long as he was a Canadian citizen . . . "

8. On March 16, 1959, the assignment application was amended to eliminate the option held by Broadcast Equipment.^{7/} For this concession, Eleven Ten agreed to an increase in the rent to be paid to Broadcast Equipment from \$50,000 to \$90,000 a year and Jack was released from the indirect guarantee of the \$100,000 loan that Don had made with the Chase Manhattan Bank. Eleven Ten then arranged to borrow \$100,000 from Empire Trust Company which was used to pay off the loan from Chase Manhattan. This loan was personally guaranteed by Don. Eleven Ten executed a promissory note for the \$100,000. Don pledged as collateral everything he owned, including all the shares he owns in Donald Cooke, Inc., all the issued and outstanding common stock of Eleven Ten, and his home and car.^{8/}

9. Jack did not advance all of the funds to acquire the station on advice of counsel, who decided that Don should contribute the balance (\$110,000). Don understood that he should make this contribution because " . . . if I were to control the station, I would have to have a certain valuation . . . involved in the transaction itself." He testified, however

that he "had always intended to put up money for my part of the transaction." There was no provision in the assignment application committing Broadcast Equipment to loan funds to Eleven Ten. In the assignment application Don represented:

"Mr. Cooke [Don] has made and will continue to make frequent visits to California, and, while he will maintain his principal office in the city of New York, he will spend at least 1/4 of his time at Pasadena in the active operation of Station KXLA. Mr. Cooke will employ a competent full-time station manager, and Mr. Cooke anticipates that 1/4 of his own time will enable him to provide through KRLA a program service which will meet the needs of the listeners within its service area. If additional time at the station appears needed or desirable, he will spend more time there."

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- 7/ The option was eliminated to avoid a hearing on the assignment application and the delay which would result. Don felt that the purchase agreement with Pacific might lapse before Commission action was forthcoming.
- 8/ Donald Cooke, Inc., is a radio representation firm of which Jack and Don are each 50 per cent shareholders.

[1341]

10. Jack first became interested in securing an investment in United States broadcast properties some time in 1950 and conferred with counsel. He was advised that since he was an alien, he was ineligible to be a licensee. For this reason he then dropped the matter. In the early part of 1958, he again discussed with the same counsel the possibilities of investing in a broadcast station in the United States. He was advised that this could be done by a leasing arrangement with an eligible licensee. The general formula of not paying more than ten times the earnings of a radio station was accepted as the standard for the purchase price. The price formula was not developed by Cooke's counsel. This

formula was the only ceiling or limitation on the money to be invested. Donald has been interested in purchasing a radio station for years but because of financial considerations, was unable to do so. [6, 8]

11. In September, 1958, after considerable study of the field, including consideration of Philadelphia, St. Louis, Louisville, and Miami, Jack first considered buying Station KRLA, Pasadena, California. He had been told by friends and business acquaintances that KRLA, a 10 kilowatt station, with an application pending for 50 kilowatts, might be for sale. Before September, 1958, Jack had not known that the station was for sale. About September 6, 1958, he was introduced in Los Angeles to Loyal King, the principal shareholder, president and general manager of Pacific, licensee of KRLA. Beginning early in September, 1958, he had many meetings with King until about September 20, in which they negotiated for the sale of KRLA. Jack had informed King at the outset of the negotiation that he was a Canadian and King was told of the plan advanced by Jack's counsel, that is, Jack's acquisition of the physical assets and Don's acquisition of the license. By the time Jack left Los Angeles about September 20, 1958, he and King had agreed upon a price for the purchase of KRLA. All that remained was the drafting of the contract of sale.

12. Don was first told that KRLA might be for sale in the first week of September, 1958, when Jack called from Los Angeles to tell him he had been talking to King. Jack informed Don of KRLA's frequency, power, and the pendency of the 50 kilowatt application. The negotiations were concluded and the purchase price agreed to by Jack without having examined the books of the station licensee. Don was committed to a purchase price by Jack without having any actual first-hand knowledge of the financial condition of the station.^{9/} The important thing, Jack informed Don, was that the application for 50 kilowatts was pending. Jack then met with Don in New York on September 21 and again described the purchase. Subsequently, in the latter part of September, 1958, Don,

Jack, and counsel met often to discuss the contract to purchase. ^{10/}

9/ Jack testified that he told Don the financial operating records of the station " . . . would be of no great moment in the operation because it was a country and western music radio station."

10/ Jack testified that after completing the negotiations with King, he stepped out of the picture; for he stated that after September 20 " . . . Mr. Dowd and Donald pretty well took over the arrangements that were necessary" to complete the purchase.

[1342]

13. On October 10, 1958, a purchase agreement between Pacific and Don was signed by Don in New York City. (This purchase agreement is part of the associated material in the assignment application which was incorporated by reference in this proceeding). Section 5, paragraph (c) of the agreement stated that Don had examined and knows the condition of the premises covered by the agreement. Don, however, had signed the purchase agreement without ever having seen the premises. In fact, Don's first visit to Pasadena was after the consummation of the assignment on May 1, 1959.

14. As a part of the assignment application, there was attached a proposed program schedule and policy statement, which, according to the application, had been prepared under Don's supervision. The record reflects that Don, Jack and counsel prepared this material. Counsel guided Jack and Don in the preparation of the proposed program schedule and policy statement. The program schedule was "fairly well" patterned after that of Station CKEY, Toronto, Canada, which is owned by Jack. Don recommended no specific program incorporated in the schedule. Donald testified under oath that he intended to carry out the public service programs proposed in the schedule. [10]

15. The following findings relate, among other things, to Jack's activities in connection with the operation of KRLA after the Commission consented to the assignment application on March 25, 1959.

16. Eleven Ten assumed operation of KRLA, on May 1, 1959. Jack arrived in Los Angeles on April 30 and remained through May 13. He attended the closing on May 1. King was asked by Don to remain as general manager of KRLA and he continued in that position until July 3. During this period Jack saw King about "three, four, five times." These visits, he testified under oath, were primarily social, although King told Jack how work was progressing on the 50 kilowatt construction permit. Jack visited the studios of KRLA some three times during the period April 30 through May 13, and also visited the transmitter site. [12]

17. Don arrived in Los Angeles about April 28 and remained until about May 5. He spoke to and met Loyal King for the first time on about April 30 or May 1, 1959. (May 1 was the day of the consummation of the assignment). Don authorized King to sign checks on behalf of Eleven Ten, and during May he instructed him with regard to various matters relating to the operation of KRLA. Donald also discussed policies and operational problems with Loyal King who stayed on at KRLA as general manager, and Donald corresponded with King and issued various instructions to him throughout his tenure as general manager. [15]

18. William J. Wheatley came to New York on May 15, 1959, at Don's suggestion, to be interviewed for the position of program director of KRLA. It was Donald who set out to hire a new program director, and Donald had knowledge of the operation of WKY in Oklahoma City and sought out Bill Wheatley who was its program director. Wheatley first met Don at Don's office for about 15 minutes. Then both of them went

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to meet Jack, and for about two or three hours Wheatley and Jack discussed radio programming in general terms in Don's presence. Virtually all of Wheatley's discussions of programming while he was in New York were with Jack. He spent many hours talking about programming with Jack, who described to Wheatley the types of radio service available in Los Angeles. They discussed how KRLA should be programmed. Wheatley and Jack compared the programming of Station WKY, Oklahoma City, Oklahoma, where Wheatley was then employed, with Jack's station, CKEY, Toronto, Canada. Donald hired Wheatley, and Jack was informed of this matter subsequent to that fact. [17, 18]

19. While in New York neither Jack nor Don discussed with Wheatley educational, religious, or any other type of "public service" programming. Wheatley did not recall having been shown the assignment application that had been filed with the Commission, or its programming representations. Don testified that he hired Wheatley partly because he was impressed with Wheatley's past experience in putting on religious sustaining, education, talk, discussion, and agricultural programming. Don wanted Jack's opinion of Wheatley, and Jack told him that Wheatley had excellent experience in the area of modern radio operation and seemed to be especially suitable for Don's objective in the programming of KRLA. Wheatley understood Donald's objective for KRLA and saw nothing inconsistent between a "Top Forty" operation and talks and cultural programming. Wheatley was hired as program director of KRLA. [23, 24]

20. Edwin V. Schulz came to New York on May 16, 1959, at Don's suggestion, to be interviewed for the job of general manager of KRLA. Don spoke to Schulz and then he introduced Schulz to Jack. Don wanted Jack to appraise the abilities of Schulz because of Jack's greater experience in operating a radio station (Don's experience had been mostly in sales). Schulz was offered the job of general manager during this visit. He reported at KRLA about July 15, 1959. Schulz was hired by Donald

after Donald contacted several persons as possible station managers without consulting Jack. Donald hired Schulz after having met him notwithstanding Jack's reservations as to Schulz's suitability. Donald immediately corresponded with Schulz and sent him the program schedule and policies submitted to the FCC and that he said that the program proposal will be " . . . similar to that which we submitted to the FCC. It will be closely related to the one submitted to the FCC but it cannot be identical." [25, 26, 27]

21. Wheatley reported to KRLA on July 1, 1959. Pursuant to instructions from Don, he was to assume general supervision of the station for two weeks pending the arrival of Schulz, the new general manager. Prior to the time Wheatley took over as program director, Donald sent him the program schedule and preamble submitted to the FCC with the transfer application, and that Donald pointed out that, while there might be some minor changes from the schedule submitted to the Commission, the actual program service would be "similar" and "closely related" to that proposal. The same information was made available to

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Schulz. It was within the scope of his authority as program director to hire new personnel to carry out the programming of the station, and he was to have complete charge of all programming. Wheatley performed these duties until about August 20, 1959. [28]

22. From May 1 until KRLA received authority to begin program tests with its 50 kilowatt operation, the programming of the station was to continue as it had under previous ownership, with country and western music. It was hoped that the permission to operate with 50 kilowatts would be received by August 1 and that simultaneously with operation with increased power the programming format would change to Top Forty- music and news. In addition, the same policy with respect to

non-commercial spot announcements was followed. This policy was "very casual" and consisted of scheduling "a certain number of non-commercial spots throughout the day based upon current needs." This "casual" policy concerning spot announcements pertained only to the transition period. When Eleven Ten took over KRLA, the station's income was largely from commercial religion and remotes from area night clubs, and that the new management's initial efforts were devoted to selection of a staff and creation of a proper physical setup. [29]

23. Within a week after his arrival, Wheatley canceled commercial religious programs and programs emanating from night clubs, such cancellations being in accord with the transfer application. Wheatley advised the churches concerned that "in the near future KRLA will institute a round-robin of broadcasts from the various churches, costs which will be borne by KRLA." Before this Don had specified that contracts for current commercial religious programs would not be renewed because of the new Top Forty schedule which was to begin September 1, 1959. Wheatley's primary responsibility between July 1 and September 1 was to physically produce the new program schedule and to build the staff necessary to implement it. The task of creating the new program and staff was compounded by the inherent problems of keeping the existing program service on the air. Wheatley auditioned 100 to 150 new announcers, supervised, evaluated and eventually terminated the old staff announcers, created a new music library and organized a continuity and production department. These duties, together with the supervision of the existing day-to-day operation, required 14 to 16 hours of Wheatley's day. [30, 31]

24. Jack arrived back in Los Angeles on July 6, 1959, and remained until July 23, 1959. During this period Jack worked with Schulz and Wheatley on a budget for KRLA. They met daily for about four days to establish how much it was going to cost on a month-to-month basis to operate the station, and to set revenue goals for the sales department to

meet operating expenses. In these discussions, decisions were arrived at mutually. Jack worked with them and a third person (whose name is not disclosed in the record) on the setting up forms to be used in the internal affairs of the station. In addition, he worked with Schulz on organizing the sales department of KRLA, and Dobson, the accountant, on setting up sales reports. In connection with their work on sales reports, Dobson knew that Jack was relaying Donald's wishes. During

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Jack's July 6-23 visit, he and Dobson met to discuss the preparation of budgets for KRLA for the remainder of 1959 and for part of 1960. Dobson prepared many budgets pursuant to Jack's instructions. He also received instructions from Schulz with regard to these budgets, but not from Wheatley. Jack did not inform Dobson that he was imparting these instructions at Don's request. In a letter by Don to Schulz dated July 29, 1959, Don wrote that he had seen copies of the working papers Jack used to describe to Dobson the method of preparing the budget and weekly sales reports for KRLA. Neil Watt, the accountant for Jack's Station CKEY, Toronto, furnished many of the working papers and methods of accounting now being used on KRLA. Jack had desk space at KRLA's studio. In these visits he discussed with Dobson the setting up of budgets and financial reports of KRLA. Financial and budget reports prepared by Dobson were mailed to Jack after he had left Los Angeles at his direction. Also at Jack's direction, Dobson sent a profit and loss statement to Jack in Toronto, as well as to Don. During this period in July, Jack also directed Dobson to change the method of reporting depreciation on financial statements. Jack asked Dobson to handle the bookkeeping of his company, Broadcast Equipment, an operation he described as "minuscule" because it consisted only of the posting of the rental checks. Dobson set up the books for Broadcast Equipment. The address of Broadcast Equipment is KRLA's studio in Pasadena. Its ledgers and books of original

entries are kept at the station's studio and are now maintained by Donald Fry, the present accountant for Eleven Ten. From the time the assignment application was approved, until February 9, 1960, various employees of Eleven Ten were authorized to sign checks on behalf of Broadcast Equipment. Dobson and Fry performed all these functions as part of their regular duties as employees of Eleven Ten. When Fry was employed, Schulz directed him to maintain the records of Broadcast Equipment.^{11/} [35]

11/ There was considerable record evidence of written reports and instructions between Don, Schulz and other employees in 1959 and 1960. This evidence consisted of the following matters: After he arrived at the station in the middle of July, 1959, Schulz exchanged frequent and detailed letters with Donald Cooke. In addition to the letters, Donald Cooke was in regular and frequent telephone communication with the staff. The subject matter of some of the correspondence can be summarized as follows:

A) On July 29, 1959, Donald Cooke wrote to Ed Schulz concerning the difficulties which he was encountering with Vernon Dobson's reports. Next day, Donald Cooke again wrote to Ed Schulz concerning the rate card of the station and possible business.

B) On August 3, Ed Schulz sent him a monitoring report on the competitive stations in the Los Angeles area.

C) Again on the 3rd of August, Ed Schulz sent Donald Cooke a nine-page report of the station's activities including the accounting problems, engineering, programming and sales. On August 6, 1959, Donald Cooke advised by the certified public accountant that the financial reports from Eleven Ten were inadequate.

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D) On August 7, Ed Schulz wrote a seven-page report to Donald Cooke highlighting the problems which the station had had including accounting department deficiencies, weekly sales reports, cancellations, and personnel problems. He pointed out that, in the past three weeks, the change of format cost most than \$20,000 in monthly billings.

E) Again on October 5, 1959, Schulz reported to Donald in detail as to the problems which were then besetting KRLA which included personnel, unions, sales, engineering, programming and finances. Schulz informed Donald that the station has turned down over \$115,000 in commercial religion but that Herb Heiman was working on a sustaining religious series to be rotated among the faiths.

F) On October 15, Don acknowledged the report in a five-page memo which expressed deep concern over the losses, gave instructions on several problems, and requested more frequent reports.

G) Again on October 26, 1959, Schulz sent Don Cooke a four-page detailed report on the operations of KRLA (in which he agreed with Donald Cooke's stated desire for constant supervision and minute policing of the operation).

H) On November 2, 1959, Donald wrote to Ed concerning the response to the Commission's MacFarland letter of October 28, 1959. In that letter, he instructed Ed Schulz, "We want to submit the fullest information, described in the most favorable light, consonant with the facts."

I) On November 8, while in Washington, Schulz wrote a regular weekly report to Don who was then in California at KRLA.

J) On November 30, 1959, Donald wrote a letter which followed a telephone conversation with Ed Schulz setting out the exact reports which he expected Ed Schulz to supply him.

K) On January 13, 1960, Ed Schulz wrote a memo to Donald Cooke pertaining to the personnel of the station.

L) On the same date, Donald Cooke wrote to Schulz and Herb Heiman instructing them to adhere to the church services in the KRLA schedule.

M) In addition, on January 13, 1960, Ed Schulz wrote to Don Cooke listing the additional religious programming on the station and the following day forwarded a complete religious and public service program schedule.

N) Schulz sent a letter to Donald Cooke on January 15, 1960, pertaining to the business activities of the station and the performance of KRLA disc jockeys.

O) On January 18, 1960, Ed Schulz reported to Don Cooke about the ratings of the station. In addition to this correspondence with Ed Schulz, Don Cooke was in contact with Armond Lamont, of the station's sales staff. On March 1, 1960, Bill McMillan, the director of news

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public affairs for the station, wrote a complete summary of the station's activities to Donald Cooke.*

In addition to the regular correspondence with Schulz as general manager, Donald Cooke received direct reports from and issued instructions to Bill Wheatley during his tenure as program director. The practice was followed with Herb Heiman, first as production supervisor and later as program director. Beginning with the September 26, 1959, letter, Herb Heiman thanked Donald Cooke for being appointed production supervisor at the station. In that letter, Heiman sent Donald Cooke detailed lists of the station's weekly production schedules, personnel lists, etc. On October 4, 1959, Herb Heiman reported to Donald Cooke on the status of current operations, staff and programming. He also informed him that the station was incorporating a 30-second farm newscast. On October 18, 1959, he informed Don that the station was utilizing the interest of high school teenagers and youngsters and creating a special feature for the major schools and that the station was still short-staffed. On October 26, 1959, Donald Cooke advised Herb Heiman again that he wanted a weekly report of the programming department prepared each Friday. He informed Herb Heiman to obtain tapes of leading disc jockeys in the country sending the best tapes to New York for final review. He inquired in detail about specific activities of the individual disc jockeys and requested specific opinions on each. On October 26, 1959, Herb Heiman informed Don Cooke that the station was engaged in intensive public service promotion in addition to featuring "KRLA Best Buy of the Day". On October 31, Herb Heiman reported to Donald Cooke in response to the latter's letter of October 26 concerning the style and activities of the individual disc jockeys and the growth of KRLA's popularity. On November 5, 1959, Donald Cooke wrote a letter to Herb Heiman concerning the individual disc jockeys and insisted

that the news department function smoothly. Donald Cooke had listened to tapes of the station which he requested at frequent intervals. On November 27, 1959, Herb Heiman reported to Donald Cooke concerning individual disc jockeys and ratings. On December 11, 1959, Herb Heiman reported to Donald Cooke pertaining to the sound of the station stressing steps being taken to improve its total appearance on the air. On December 26, 1959, Herb Heiman wrote a letter to Don Cooke pertaining to the holiday Christmas programming which the station had carried and advising that the special file on public service programs had been forwarded. On December 31, 1959, Herb Heiman wrote a letter to Don Cooke which included among others a report of the station's Christmas campaign and such features as Recreation Scope, Frosty's Frost Warnings, and complete weather breakdown. On January 4, 1960, Donald Cooke wrote a detailed letter to Herb Heiman analyzing the promises which the station has made to the FCC in the transfer application, discussing the details of each individual program and instructing him to carry out the representations which were made to the Commission. Donald Cooke insisted that Heiman begin work on such portions of the program proposal which have not yet been complied with and requested prompt reports concerning these activities. On January 8, 1960, Herb Heiman reported to Donald Cooke concerning the program proposals which have been put into action upon the receipt of Don Cooke's memo of January 4.

*/ During the further proceedings in Washington, Counsel for KRLA offered proof of an additional 67 letters to and from Donald Cooke and Heiman and Schulz.

24A. Jack Cooke's conversations concerning preparation of budgets were at Donald's specific request communicated to Jack before he came out to Los Angeles. As early as May 25, 1959, or six weeks prior to Jack's coming to Los Angeles, Dobson had received written communication from Donald Cooke concerning budgets in which Donald gave him instructions and criticisms and, in fact, included sample budgets. Dobson had been having difficulties preparing these budgets and other financial reports. The budget conferences between Jack Cooke and Edwin Schulz followed in point of time specific correspondence from Donald to Schulz on this subject. [32, 33]

24B. Jack Cooke's return to Los Angeles for a period from July 6 to July 23 was primarily for the purpose of investigating business opportunities. During that time, he met several times with Wheatley and Schulz, and he discussed with them the progress of their jobs and the radio station which he visited several times. Wheatley mentioned to him a matter concerning jingles that he was planning to buy for the station. Don had asked Jack to talk to Dobson in an effort to straighten out the trouble Dobson was having. At Jack Cooke's request, Dobson sent to Toronto copies of reports for June and July which he had sent to Donald Cooke. Dobson saw nothing unusual in this. Dobson estimated that the time which Jack Cooke spent with him working on budgets was a few hours at a time. Mrs. Pressley, the bookkeeper, estimated that Jack Cooke spent several hours a day for a period of a week on budget and financial reports. He also discussed the engineering aspects of the operation with Mr. Reeder, the station's chief engineer, since Broadcast Equipment was responsible for the equipment. Other than these discussions, he issued no instructions to any member of the staff of the Eleven Ten concerning their work. During this period in Los Angeles, he spent much time in dealing with problems pertaining to the formation of a third baseball league and interviewing representatives of television production companies, record companies, etc. He was, however, in telephone contact with his brother. He left Los Angeles on July 23, 1959. [39]

25. Wheatley mailed Don a tape recording of promotional jingles, (the Dallas jingles) recorded for Station WKY, Oklahoma City, Oklahoma. Don approved the purchase of these jingles, the only limitation being his indecision as to whether they should be purchased for cash or on a barter basis. Thereafter, these same jingles were recorded in Los Angeles for KRLA and bought by Wheatley on behalf of Eleven Ten for \$2,000 cash and for a dollar value of spot announcement time on KRLA (variously estimated as from 12 to 20 thousand dollars), which the producers of the jingles could sell for cash. The jingles were never broadcast over KRLA

because Jack did not consider them to be suitable for use on the air. Donald was present at the Los Angeles recording session and after having heard part of the jingles, he told Wheatley that he hoped the others would be better. Jack claims to have heard and disapproved of some of the jingles other than the Dallas jingles during his July 9-23 visit. Wheatley, however, claims that Jack's disapproval was directed at the Dallas jingles and was expressed before August 20 but after the August 17 recording session. [43]

11/ (cont'd) In addition to these communications between Los Angeles and New York, Don visited Los Angeles on the following occasions: April 29 through May 4, 1959; August 12 through August 21, 1959; November 9 through November 20, 1958 (Sic) January 22 through February 10, 1960; March 14 through March 18, 1960; and June 6 through June 30, 1960. [40]

26. Don, as already indicated, arrived back in Los Angeles on August 12 and remained until August 21, 1959. Most of his time was spent in the Hollywood sales office organizing the sales department. He visited the studios of KRLA on August 20 for the first time. He saw Wheatley twice prior to August 20, once on August 12 at an advertising agency and on August 17 when the jingles described above were recorded. On August 18, 1959, Wheatley, in a memorandum to the staff of KRLA, declared that there would be a presentation or "dry run" on August 20 for Jack and Don, among others. Jack arrived back in Los Angeles on August 19. He came to Los Angeles, he testified, "to help him with any of the problems that are almost, inevitably attendant on the opening of a station, to lend [Don] assistance, guidance, sympathy, comfort, and to enjoy the opening promotion of the KRLA campaign . . . " Jack testified that upon his arrival, Don informed him that " . . . [KRLA] was a mess."^{12/}

27. On August 20, 1959, the dry run as scheduled was held at the studios at KRLA. Its purpose was to present on the air, personnel hired by Wheatley. Each disc jockey Wheatley had hired did a simulated 30-minute program while Jack took notes. Don testified that he had asked Jack to note his comments as to the announcers, the pace, how fast the operation should be, and the general running of a Top Forty-type station, since he felt that Jack's past knowledge and experience made him better equipped for purpose than he was. Jack was "shocked" by Wheatley's choice of disc jockeys and he so informed Don. During the dry run, Jack made many remarks to Wheatley such as "This man has no business being a disc jockey, " "This man should never have been hired," "What were you thinking about when you hired this man" and "This man has got to go." Don testified, however, that during the dry run Jack stated that he considered a disc jockey named Frank Pollack to be unsatisfactory, but that Don disagreed and Pollack's employment was not terminated at that time. Wheatley testified that he was present throughout the dry run and recalled "overhearing" no such conversation.^{13/} Frank Pollack was originally referred to Wheatley by Donald Cooke. During this "dry run," Donald Cooke also expressed his opinion of the operation but perhaps not as forcefully as his brother. [46, 47]

^{12/} The Broadcast Bureau questions the credibility of this testimony on the ground Don was not then sufficiently informed of KRLA's operations to make an authoritative statement of its condition, as since August 12 he had spent most of his time in the KRLA sales department and did not visit the studios until August 20, the day of the dry run. Obviously, it is impossible to hold, however, that Jack's testimony is incredible merely because Don may have overestimated the extent of his knowledge of KRLA. In any event, the "mess" referred to was not explained in the record; it may, indeed, have related to Don's knowledge of the sales department.

^{13/} The Broadcast Bureau's proposed findings are so couched as apparently to suggest a finding that because of the alleged discrepancy between Wheatley's and Don's testimony, Don's must be

discredited. It must be noted, however, that Wheatley's testimony was in the form of "negative evidence" -- he did not "overhear." He was directly asked whether Don and Jack had disagreed about Pollack. Consequently, the impeaching power of Wheatley's testimony here would be insufficient to discredit Don's.

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28. That evening Jack, Wheatley, Schulz and Don met at the Hollywood sales office. Jack repeated to Wheatley in substance the same remarks he had made earlier that day. Over Jack's objections, Donald had decided to fire the announcers (who had proved to be unsatisfactory) while Schulz suggested that some be fired and some retained. Audition tapes of disc jockey applicants who had not been hired by Wheatley were listened to and analyzed by the group. Wheatley testified that Jack determined which applicants should be contacted as possible disc jockeys for KRLA^{14/} and directed the search for new disc jockeys. Jack Cooke directed but did not participate in the locating of announcers, and Donald Cooke during that meeting inquired about the qualifications of an announcer named Mickey Schorr who had submitted a tape. Wheatley, confusing him with another announcer with a similar name, deprecated his qualifications but Donald Cooke questioned his judgment. Wheatley later informed Donald Cooke of his own error. Wheatley did not stay for the entire length of the meeting. It was decided that Don, Wheatley, and Schulz would contact the likely prospects. [48, 49, 51, B.B.1]

29. Don left Los Angeles for New York the next day, August 21, 1959, because of "personal and business reasons." He asked Jack to take over the duties of program director.

30. After Don left on August 21, 1959, Jack, at a meeting on August 23, advised the staff that Wheatley was still program director and that they were to take their orders from Wheatley. Thereafter, Wheatley^{15/} reported to Jack and not to Schulz, the general manager. Subsequent to August 20, Jack actively participated in the organization of the staff and gave instructions to on-the-air personnel.

31. Jack also worked with the sales department, and with the accounting department establishing reporting procedures for sales reports and projected revenues for KRLA. Jack's work in the accounting department was pursuant to previously issued instructions from Donald. In addition, he worked on setting up bookkeeping procedures. These were all duties which Wheatley had never performed as program director. Prior to September 14, Jack visited the McCann-Erickson Advertising Agency, the manager of Western Airlines, and two other advertising agencies whose names he does not recall, for the purpose of trying to sell advertising time for KRLA. Jack saw an account executive for McCann-Erickson two times to urge him to buy time for Coca Cola on KRLA. Subsequently, Jack spoke to this account executive over the telephone and Jack was told that the Coca Cola account would not come to KRLA. [56]

32. Jack also met with Schulz and the Eiseman-Johns Advertising Agency to plan a promotional contest for KRLA. The promotion was to use newspaper advertising to promote a \$25,000 contest based on identifying the pictures of KRLA's disc jockeys.

14/ Jack testified that it was determined " - - - by the group mutually" which applicants would be contacted.

15/ Wheatley, about August 21 or 22, tried to resign as program director, but Schulz told him he would have to tender his resignation to Don, who had hired him. He tendered his resignation to Jack, who refused to accept it for the same reason. Finally, he was allowed to resign by Don, who required him to execute a covenant not to compete in the market. The resignation was effective September 11, 1959.

33. During the period August 21 to September 15, 1959, while Don was in New York, he received no written communication from Jack, although he discussed the progress of the programming, the problems inherited from Wheatley, and the promotions and contests KRLA would be

sponsoring with Jack on the telephone.

34. The August 23, 1959, meeting mentioned above, was attended by Jack, Wheatley, Schulz, and all of the disc jockeys and newsmen. Schulz opened the meeting, made a few remarks, and then turned it over to Jack. The disc jockeys wanted to know whether they were still employed. Jack assured them that their contracts would be honored. One disc jockey wanted a written contract. Jack told him that he did not need one, but if he wanted a written contract, the disc jockey could have it.

35. As noted above, it was hoped that permission to operate with 50 kilowatts power would be received by August 1 and that simultaneously with operation at the increased power the programming format of KRLA would change from country and western to Top Forty music and news. Jack told Wheatley that the target date had been changed to September 1.^{16/} On August 28, 1959, the Commission denied the station's request for program test authorization. Therefore, a new target date of September 2, 1959, was set for the Top Forty format. On August 31, 1959, the station received permission for program test authorization and at 6 a.m., September 3, 1959, the regular programming of the new Top Forty format began.

36. During this period of uncertainty as to when KRLA would receive program test authorization, Jack and others conceived the idea of a contest as a "sustaining action" pending receipt of the authorization. The contest would relieve the embarrassment of KRLA in failing to operate at 50 kilowatts at an earlier date. Jack's idea revolved around a Golden Key which would theoretically unlock the new transmitter for KRLA's 50-kilowatt operation. Wheatley was told by Jack that a key would be hidden, that KRLA would broadcast clues to its location, and that when the key was found a money prize would be awarded. At the beginning of the contest, the prize was to be \$50,000; as the clues got easier, the prize was to be reduced (each clue was assigned a prize value). The minimum prize was to be \$2,000, but Jack later determined that \$5,000 would be the minimum. The contest began on August 30, 1959, and ended on September 7, 1959. [59]

37. Beginning at midnight September 1, 1959, on a 24-hour basis until 6 a.m., September 3, KRLA continuously broadcast nothing but contest clues. The logs of KRLA reflect that this programming which is listed as "Talk" consisted solely of clues to the location of the Golden Key, with the exception that twice during each quarter hour the clues were interrupted at approximately 4 or 5 minute intervals by a telephone contest in which names of Los Angeles residents were picked from the telephone book at random and they were asked to call the station within a stipulated time in order to win a money prize; and 2) by another telephone prize contest "Don't Say Hello, Say KRLA." Each of these subsidiary contests was broadcast for approximately 1 minute. [B.B. 3]

16/ Technical problems compelled the change

[1352]

38. At 6 a.m., September 3, 1959, KRLA's program logs reflect it began broadcasting its regular popular music programming format. This programming consisted of a disc jockey show which had included within each one-quarter hour two contest promotions. One of the contests, as described above, involved called names at random from Los Angeles telephone books. The other was the Golden Key contest. The program logs show this programming continued at least through September 4, 1959.

39. The clues to the Golden Key contest were written at Jack's direction by Wheatley and a friend of Jack's named Frank Loy. Jack buried the key initially on August 29, 1959, but he did not tell Wheatley where the key was hidden. Wheatley thereafter wrote, without any knowledge of the hiding place, at least twenty contest clues which were broadcast over KRLA. He submitted these clues to Jack before their broadcast. Jack testified that "it's the closest thing to being impossible" that the key could have been found from listening to Wheatley's clues broadcast from August 30 to September 3. These clues were ambiguous and

could have applied to any location in Los Angeles. Wheatley knew the location of the key when the clues were worth \$40,000, and he testified that the clues were definite enough at a value of \$20,000 -- on 8 a.m., Monday, September 7, 1959, the day the key was found -- for some one to have determined the key's location. These clues written by Wheatley while he was unaware of the key's whereabouts were most ambiguous and were, therefore, applicable but only in the sense that the key could have been anywhere. [60, 61, 62]

40. The key was not found where it had been hidden on August 29, 1959. Jack's friend Frank Loy, on September 3, 1959, hid the key at the Marineland resort, and it was not until September 4 or 5 that Loy, at Jack's direction, told Wheatley where the key was buried. The original clues, written by Wheatley when he had no knowledge of where the key was hidden, were broadcast over KRLA until the morning of September 7.

41. After Wheatley was told that the key had been hidden at Marineland, but before September 7, Jack told Wheatley that the key had to be found on September 7. Jack wanted the key found then because it was Labor Day and thousands of people would be at Marineland, a popular recreation spot. Jack directed Wheatley to write clues so leading that it would be obvious where the key was hidden. After receiving these instructions, Wheatley devised clues which were broadcast on KRLA for the first time on the morning of September 7, 1959. He wrote the clues from information supplied to him by Loy at the time he was told of the hiding place. They definitely pointed to the key's location. At about 2:30 p.m. on September 7 Jack told Wheatley that although Jack had originally determined that the prize was to decrease to \$2,000, he had decided (as above indicated) that when \$5,000 was reached the prize would go no lower. Mrs. Patricia Beers, a KRLA listener, found the key on September 7, 1959, and she received the \$5,000 at the studios to the accompaniment of promotional pictures. The allocation of \$50,000 for the Golden Key contest was approved by Donald. [63]

[1353]

42. Although Jack had no authority to sign checks on behalf of Eleven Ten, he co-signed two such checks. He co-signed the \$5,000 check dated September 7, 1959, awarded to the finder of the Golden Key contest, and a \$200 check dated September 12, 1959. Jack could not recall the purpose of the \$200 check, which was payable to Cash. Both checks were co-signed by Edwin V. Schulz, General Manager. Don testified that he never authorized Jack to sign checks on behalf of Eleven Ten. The voucher copy of the \$5,000 and \$200 checks which Jack signed on behalf of Eleven Ten had had Jack's signature erased from the vouchers, but both Don and Jack testified that neither one had ordered these erasures, and their origin is a mystery in this record. Donald had no knowledge that checks had been signed other than in accordance with the given authority, and neither Jack nor Donald knew that the erasures on the vouchers had been made until this fact was disclosed at the hearing. [66]

43. Perry Allen Contest. The tape of another disc jockey, Perry Allen, who was then employed by Station WKBW, Buffalo, New York, was heard by Don on the evening of August 20, 1959, and also by Jack then or a few days later.^{17/} During this meeting, Donald tried to contact Perry Allen but was unable to reach him. Allen, to get a job at KRLA, had sent a tape of his voice to Wheatley some time before August 20, 1959. Wheatley telegraphed Allen that his tape indicated he would be unsuitable for KRLA, his delivery being "too frantic." However, despite this shortcoming, it showed talent on Allen's part. Hal Cooke, a brother of Donald and Jack Cooke, who knew Allen, contacted him and asked him for another tape. The tape was sent to Wheatley. These events all occurred prior to August 26, 1959. During the last week of August Jack called Allen in Buffalo and offered him the job of disc jockey during the 6 to 9 a.m. period.^{18/} Jack told Allen that he would be needed for the kick-off of KRLA's Top Forty format. Allen stated that he would try to be at KRLA for the kick-off,

but that he was under a contract to WKBW, which called for a notice of termination of two weeks. The kick-off, schedule to coincide with the increased power, was of crucial importance to KRLA. The event was to be heralded by much publicity and a cocktail party to which the area's leading advertisers were invited. The application for increased power had been filed during the week of August 24, 1959, and approval was expected before the September 1 target date. Allen could not accept employment until he spoke to the management of WKBW about his existing contract. Jack told Allen to call him after he had spoken to the management of the station. [69, 70, 71, 73]

44. Following Allen's conversation with Jack, he spoke to the WKBW management, who contended that the station could not release him from his contract until it found a replacement. Allen then called Jack and told him of WKBW's position. Jack told Allen to try and find a replacement, and offered to reimburse Allen for any liability he might incur in leaving Buffalo without WKBW's consent.

17/ Don had already heard Perry Allen over WKBW.

18/ Jack testified that he told Allen that "Donald had tried to reach him, that he had been unable to, that I was acting in Donald's behalf at KXLA, that the new tape was in [a Perry Allen tape other than the 'too frantic' tape mentioned above] and that we would like to have him join the staff of KXLA in the very important if not the most important time slot in any radio station, the 6:00 to 9:00 a.m. period."

45. Allen, at Jack's suggestion, spoke to a lawyer in Buffalo who advised him that the contract he had with WKBW was binding; and when Allen again asked WKBW for an early release, the licensee of WKBW threatened to institute injunction proceedings against Allen if he left without his permission. On or about August 30, Allen's wife told Jack

that Allen could not be in Los Angeles for the kick-off and Jack asked her the earliest date he could arrive in Los Angeles. She then estimated a date two weeks ahead, that is, September 12, 1959, when Allen could leave WKBW with the permission of the management. Later that day Jack called Allen and told him that they had a definite agreement that Allen would come to Los Angeles September 12, 1959, and that since Allen could not be at KRLA for the kick-off of the new format, it would be necessary to have a promotional contest centering around him.

46. The next day, August 31, Jack called Allen in Buffalo to give him instructions regarding the promotional contest he had mentioned to Allen the previous day. Allen first outlined a contest idea which Jack rejected immediately over the telephone.^{19/} Jack then described to Allen the "Find Perry Allen Contest." Listeners were invited to walk up to a person and ask, "Are you Perry Allen, the latest member of KRLA, Eleven Ten." Clues would be broadcast each day. The first person to locate Perry Allen would get the prize. The prize would start at \$10,000 and each day it would be decreased by \$1,000 until Allen reached Los Angeles, when the prize would have decreased to \$1,000 and the clues would be very easy. Jack told Allen to prepare tapes to be sent to KRLA which were designed in Jack's own words to

" . . . get everyone, if it were possible, in Los Angeles accosting every little man in Los Angeles with the statement, KRLA, Eleven Ten."

47. Jack asked Allen if he had any particular characteristics that would be noticeable in a crowd. Allen told him that he was short, that he wore a bow tie frequently, and a grey suit. Jack directed Allen to tape 12 announcements per day for 10 days with something like the following example:

"Look for the guy in the bow tie . . . in the Los Angeles restaurant, and if you walk up to the right person and ask [the correct] question . . . you'll win the money." ^{20/}

From Jack's instructions, Allen wrote a "fact sheet" which he read back to Jack to make sure he had the instructions correct regarding the contents of the tapes, and from this fact sheet, Allen recorded the

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- 19/ The idea involved a contest which would require the listener to guess the distance Allen would travel each day en route to California, identify his hotel, and so on. Jack rejected the contest idea as impracticable because Allen "would have to come by some strange means of transportation in order to take two weeks to get from Buffalo to Los Angeles."
- 20/ Jack testified "he can't honestly" say whether he directed Allen in the tapes to "... announce that he was to be searched or looked for in Los Angeles, in Los Angeles restaurants or at the ball park," but "[he] may have."

tapes which he mailed to KRLA. A day or two later Jack telephoned Allen to tell him the content of the tapes was fine, but that they were too long, and he asked Allen to shorten them. Allen did so. Jack then arranged for the tapes to be broadcast over KRLA.

48. Jack called a meeting of the KRLA staff before the first broadcast of Allen's tapes; the Allen contest was discussed. Don Cole, a KRLA disc jockey during the period under discussion,^{21/} at a staff meeting, testified that he informed Jack that he objected to the form of the contest because Allen was not in Los Angeles, and that he told Jack that if anybody discovered Allen was not in Los Angeles, "we would be in trouble." In substance, he testified, Jack replied, "Don't you worry about it, I'll take care of it."^{22/} Jack told the disc jockeys the hours they would be broadcasting, how many of the Top Forty records would be used in the programming, and he explained the Perry Allen Contest. One of the disc jockeys, Frank Pollack, during the meeting, told Jack that Purcell and Blore of Station KFWB, Los Angeles, knew where Allen was, though

Pollack didn't say where. Jack replied that no one knew where Allen was except himself (Jack) and a few others.^{23/}

49. Jack directed the disc jockeys to broadcast extemporaneous live announcement "tags" to Allen's tapes. Jack was asked the question: "Did you advise the announcers who handled the Perry Allen show for the first two days that they were to ad lib along with the tape and instruct them to say:

'Go out into the streets of Los Angeles, look in restaurants or in ball parks for Perry Allen' and to generally give the impression that Perry Allen was located in Los Angeles."

Jack answered this question: "I suppose I did." There were no written announcements or text for the announcers who made these live comments following Perry Allen's tapes, except for a typewritten fact sheet. [78]

50. On the morning of September 3, Cecil, (Hal) Goodwin, then a disc jockey employed by Eleven Ten (his employment was terminated on September 11, 1959), broadcast over KRLA some of the tapes Allen had recorded. In addition, as directed by Jack, he amplified these tapes by saying in substance, "Go out on the streets . . ." and look for Allen.

21/ Cole left KRLA on October 4, 1960, having "refused to sign a contract for another year of employment with KRLA, another year of employment because of this pending hearing . . ."

22/ Jack, however, testified he did not recall that anyone objected to the Perry Allen contest because it was known Allen was in Buffalo.

23/ Jack, however, testified he did not recall a member of the staff's saying that Purcell and Blore, of Station KFVB, knew of Allen's whereabouts.

51. On the morning of September 4, Don Cole (at Jack's suggestion or appeal") broadcast over KRLA some of the tapes Allen had recorded. Jack heard the tapes broadcast "which led [him] to believe that Perry Allen might be in Los Angeles."

52. Allen was "found" on September 4 (the second day of the contest) in Buffalo by two employees of the corporate licensee of KFWB, Los Angeles.^{24/} Upon being informed that Allen had been found, KRLA immediately carried announcements that Allen had been found. When it developed that the finders of Allen were employed by the licensee of a competing radio station in Los Angeles, announcements to that effect were carried over KRLA until the competing station asked that they be stopped. The winners of the contest were paid the prize. After extended negotiations, about October 26, 1959, \$10,000 was paid to Purcell (one of the finders) on behalf of Station KFWB, as the prize for finding Allen. The decision to pay the finders of Perry Allen was made by Donald Cooke despite the feelings of Schulz and Jack Cooke that the matter be litigated. While Donald Cooke knew and approved of the general nature of the Perry Allen Contest, he was not aware of its details when he authorized it. During the events leading up to the Perry Allen Contest and during the running of the contest, Donald Cooke was not in Los Angeles. [80, 81, 82]

53. In connection with the "Perry Allen" contest, KRLA ran two other promotions from September 3 to September 12, 1959. A prize was awarded to the listener who guessed the exact time Allen spoke his first words over KRLA. The second promotion was one that KRLA arranged for Allen's arrival at the Los Angeles airport (on September 12). Allen was directed to sell dollar bills there for fifty cents; while he was selling them, other station personnel were doing the same thing. The station awarded prizes to all of the winners of the contests which it had conducted. [83]

54. Jack left KRLA on September 14, 1959, but returned on September 21, 1959, for about an hour to introduce Herbert Heiman to the staff of KRLA. Jack had hired Heiman as production director, or manager, after discussion with Don. Jack left Los Angeles on September 21, 1959, and did not return until a few days before November 2, 1960 (just before the present hearing on the renewal of KRLA's license).^{25/} Wheatley's testimony concerning Jack's possible exercise of control over KRLA is based upon his surmises and opinion. [135]

55. Loans From Broadcast Equipment to Eleven Ten. Some time during August, 1959, Don told Jack that KRLA needed more money. Jack agreed that Broadcast Equipment would lend \$50,000 to Eleven Ten. He agreed to make the loan since he already had a large investment in Broadcast Equipment and he felt it necessary to protect that investment. Also, he wanted to help Don. Don had mortgaged everything he owned to form Eleven Ten and

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- 24/ After being tapped in Buffalo, Allen put in a call for Wheatley in Los Angeles but could not reach him, and then called Jack Cooke, who invited the winners to come to Los Angeles so that the promotional value of the contest could be exploited (one of the winners told Jack he was from a St. Paul radio station).
- 25/ Since the acquisition of KRLA by Eleven Ten, Jack had been in Los Angeles for the following periods: April 20-May 13, 1959; July 6-23, 1959; August 19-September 26, 1959 (and, in addition, during the hearing period).

[1357]

did not have the additional funds needed for the operation of KRLA; and he could not borrow money from any source other than Jack. It later became necessary for Jack to lend additional money to Don. These later loans were required because " . . . Don had reached a point really of no return. It was almost essential to continue to help him."

56. As of September 30, 1960, Eleven Ten owed Broadcast Equipment \$375,000 on the principal of the money lent to Eleven Ten, and \$13,429 in interest on the loans. The loans were unsecured and are evidenced by demand notes at 5-1/2 per cent interest. At least one of these notes, that of October 22, 1959, was prepared by Schulz at Don's direction. The rent due under the lease between Eleven Ten and Broadcast Equipment up to September 30, 1960 (17 months from the assignment on May 1, 1959) was \$127,500. Of this amount Eleven Ten has only paid \$4,167 to Broadcast Equipment. The remainder of the rent, totaling \$123,333,

was still owing on that date. The grand total of money owed by Eleven Ten to Broadcast Equipment as of September 30, 1960, is \$511,762. As noted above, Eleven Ten has borrowed \$100,000 from Empire Trust on a loan which Don personally guaranteed. As of September 30, 1960, Eleven Ten had paid \$50,000 on the principal and \$5,972 interest (5%) on this note. Part of the funds borrowed by Eleven Ten from Broadcast Equipment were used to make all the payments on the principal and interest due on this loan.

57. Relationship of Eleven Ten and Broadcast Equipment Under Lease Agreement. The lease agreement states:

"Eleven Ten is fully aware of the conditions of the Leased Premises. Broadcast Equipment makes no warranty or representation, either express or implied, as to the fitness, design, or condition of, or as to the quality of the material, equipment, or workmanship in the Leased Premises except that Broadcast Equipment does warrant that it will at its own cost and expense install any and all equipment and facilities necessary to enable [Eleven Ten] to operate with a power of 50 kilowatts in accordance with its authority from the Federal Communications Commission."

There is no provision in the lease for any increase in rent because of additional expenditures by Broadcast Equipment.

58. Broadcast Equipment has purchased and depreciates studio equipment for KRLA valued at \$4,492. Eleven Ten has purchased and depreciates studio equipment valued at \$3,719. Fry, Eleven Ten's accountant, received instructions from Jack and Don as to whether equipment purchased is to be owned by Broadcast Equipment or Eleven Ten. Depreciation on an asset is taken by the corporation which carries the asset on

its books. Jack Reeder, chief engineer of KRLA, authorized the purchase of the studio equipment bought by Broadcast Equipment for KRLA. Fry sent the invoice to Canada and a check was prepared there for the purchase price.

[1358]

59. Don read the assignment and lease agreement between Eleven Ten and Broadcast Equipment many times. It is his understanding that Eleven Ten may require Broadcast Equipment to furnish additional funds for equipment and studios, beyond the amount which had been necessary to complete construction and place KRLA's 50 kw operation on the air. For example, should KRLA receive permission to move its studios from Pasadena to Los Angeles, Broadcast Equipment must furnish and pay for all equipment, including costs of installation. The basis for his belief is the fact that Broadcast Equipment owns and controls all physical assets. Don testified:

"This is the original arrangement made between Eleven Ten and Broadcast Equipment that, when and if Jack Cooke became an American citizen, he would have the rights to purchase Eleven Ten Broadcasting."

Jack testified under oath that there are no understandings between him and Don with respect to the ownership or operation of KRLA, or to future interest in the property, not disclosed to the Commission. The details of the lease arrangement and other accompanying transactions were disclosed to the Commission and form part of the application pursuant to which, with Commission approval, Eleven Ten became the licensee of KRLA. This background material was reviewed in detail in this hearing although these matters were not in issue. There were no understandings regarding the operation or control of KRLA between Donald Cooke and Jack Cooke, explicit or implied, which were not disclosed to the Commission and there were none at the time of the hearing. [86, 87]

60. Programming Representations Made In Assignment Application.

In the assignment application filed with the Commission, Eleven Ten submitted a policy statement regarding its proposed programming. It stated:

"The applicant proposes to schedule on KXLA, Pasadena, California, a program of popular music, news on the hour, and news headlines on the half-hour, with sportscasts at peak periods of male listening. The program emphasizing music, news and sports will be produced to appeal to the largest possible cross-section of audience in the station's area."

Surveys will be conducted regularly in an attempt to determine the changing likes and dislikes of the listeners of the area. KXLA will keep abreast of the results of these surveys by programming accordingly.

In the field of public service, KXLA proposes to broadcast polished and attractive performances by teachers, educators, and proponents of culture. In order to do so, KXLA proposes to train and coach speakers, where necessary, to present talks with an aura of professionalism and showmanship.

Free time on the station, and, again, the help and assistance of the station's staff will enhance the programs broadcast by religious and civic service organizations.

[1359]

MUSIC:

Recorded and transcribed popular music will constitute the majority of the music broadcast by KXLA. Records and transcriptions will be chosen by the station's library staff to present a well-balanced schedule of the music of yesterday, today and tomorrow.

NEWS:

The News Department's chief functions will be twofold: (1) the rewriting and editing of teletype news; (2) the gathering and processing of local news. By highlighting local facets of the news and selecting and rewriting items of national news with a desirable local impact, the applicant further plans to fulfill a need of listeners of the area.

RELIGION:

KXLA will not accept sponsored religious programs. Religious programs normally will be confined to the period 6 AM to 12 noon Sundays, with the exception of a daily inspirational message broadcast early in the morning. A religious service of a different denomination (in rotation) will be broadcast each Sunday, thus giving every religion an opportunity to communicate with the public served by the station.

AGRICULTURE:

KXLA serves a farm area, second in importance only to the industrial strength of the region. With this in mind, the station will schedule one hour program each week calculated to satisfy the needs and the entertainment more of the farm audience. Bulletins highlighting farm market prices, weather conditions of interest to the farmers - such as storm and frost warnings - will be broadcast on every newscast twenty-four times a day.

EDUCATION:

The applicant proposes to offer to educators, scientists and professional men, not only the physical facilities of the station, but the talents of the program personnel of the station to assist these men to present their talks in a manner best calculated to attract listeners. It has been the experience of the applicant that radio stations frequently provide their facilities to speakers, but fail to help these people to a practical understanding and proper use of the broadcast medium.

KXLA will schedule at 10:45 PM, nightly, the program "Town Hall" on which exponents of culture, science, technology, etc. will speak.

[1360]

We believe these programs will be of sufficient general interest to the public to cause stations in other areas to schedule them. KXLA will offer to these other stations tapes of the programs so that they too may broadcast them.

COMMUNITY SERVICE:

KXLA plans to schedule each night at 10:40 PM, Monday thru Saturday, the program "Town Crier" in which will be broadcast announcements and information highlighting the events of the community; charity, hospital, church and civic organizations. The station will not only offer its facilities to these civic groups, but will develop and broadcast information of their activities which the station believes will be of general interest to the public. (Assignment Application.)

Don testified he intended to carry out all the representations set forth above.

61. The policy statement on religion was proposed by Don and was his "most specific contribution." Don felt KRLA " . . . had to do a great deal of public service, we had to cut out commercial religion, and we had to do an all-around community job." KRLA proposed to broadcast religious programming on Sunday from 6:05-6:30 a.m., 6:31-7:00, 7:05-7:30, 8:05-8:30, 9:05-9:30, 10:05-10:30, and church services from 11:05-12:00 noon.

62. Don was responsible for a proposed program entitled Town Crier, which was to be broadcast nightly at 10:40, and one called Town Hall at 10:45. The former was to be a community calendar and the latter was to be a Discussion program.

63. The percentage of time proposed to be devoted to the various program categories was as follows:

Entertainment	-	82.7%
Religious	-	2.1
Agriculture	-	1.0
Education	-	1.9
News	-	10.0
Discussion	-	0.3
Talks	-	2.0

64. Eleven Ten's Programming Policy and Programming Prior to January, 1960. As stated above, the assignment application was granted on March 25, 1959, and Eleven Ten assumed operation of KRLA on May 1, 1959. The application for renewal of KRLA's license was filed with the Commission on September 2, 1959. Since the programming analysis covered only the period the station was operated by Pacific, the Commission directed Eleven Ten by letter dated October 28, 1959, to submit a revised program analysis for the period October 18 through 24, 1959, inclusive,

[1361]

and the logs for each date. By amendment to its renewal application submitted November 12, 1959, Eleven Ten represented that for the week of October 18-24, 1959, the percentage of time devoted to the following categories was:

Entertainment	87.25%
Religious	0.16 ^{26/}
Agricultural	0.69 ^{26/}
Educational	0.00
News	8.20
Discussion	0.00
Talks	3.70

65. Wheatley testified that the programs appearing in the renewal application did not constitute any great departure from the programs proposed in the assignment application. They were essentially the same. There may have been a slight difference in time or the length of the program but not in the concept of the programming as it was proposed. Wheatley never received any "specific" instructions to prepare such programming to coincide with the commencement of the new Top Forty format.^{27/} The programming portion of the September 2, 1959, renewal application, including the percentage analysis, was prepared by Wheatley. At the time Wheatley prepared the renewal application, he had available to him the programming information which was filed with the Commission in connection with the application of Eleven Ten to acquire KXLA. At the time Wheatley prepared the renewal application, he fully intended to broadcast a program called "Town Crier" and a program called "Town Hall." However, the arrangements for those programs had not yet been completed. [91, 92, 93]

66. The programming for the week of October 18-24, 1959, and the programming proposed to be broadcast by KRLA represents a departure by Eleven Ten from the programming promises in its assignment application. In the renewal application amendment filed November 12, 1959, it was stated: "The basic ingredient of the proposed programming of KRLA is music. . . . Management has evolved its basic format which should remain substantially the same throughout the coming license period." (Emphasis not supplied). The application for renewal also referred to religious, agricultural, educational, and community service programming. In the amendment, Eleven Ten said, "It is the opinion of the licensee that under present day circumstances radio is most effective when its messages are reduced to timely and repetitive announcements. The experience of KRLA during the short time that it has operated under its present ownership has proved the effectiveness of this technique." In a memorandum from Schulz to the employees of Donald Cooke, Inc., dated October 15, 1959, which

is set forth below, Schulz said that KRLA was the only Los Angeles radio station which could offer advertisers complete personality programming (disc jockey) all day Sunday in addition to the other six days uninterrupted by commercial religion. [94, 95]

26/ See below.

27/ Wheatley was asked whether he had received any "instructions," and replied that he had received "no such specific instructions." The implications of this discrepancy between question and answer were not explored on the record.

[1362]

67. On October 2, 1959, Don had sent an office memorandum to Heiman with a copy to Schulz.^{28/} It read:

"To Herb Heiman From D. R. Cooke Copy to Ed Schulz

"SUBJECT:

"When I made up the program schedule which was submitted to the FCC, and approved by them, I included a farm report on each newscast. I regret now that I did so. However, Pierson, Ball and Dowd urged that KRLA increase its amount of agricultural programming. Thus, the reason for the inclusion of the farm report.

"Naturally, we don't want the usual 'hay seed' type of report inserted in our newscasts. However, surely there are means of getting around the strictly rural or 'hay seed' type of information.

"For instance, could we broadcast the prices of:

Avocadoes

Oranges

Lemons

"This information can be obtained from the Sunkist Fruit Exchange in Los Angeles. I believe they issue a daily citrus report.

Wheat prices

Corn prices

Barley prices

as quoted on the Chicago Grain Market.

"Available also, I am given to understand, are the prices on cattle, as quoted on the Oklahoma and Los Angeles Cattle Markets.

"Ed Schulz has an idea that the farm market reports can be incorporated in our schedule in the form of 'tips to housewives.' I don't see how this would help KRLA conform to its proposed broadcast schedule. I think that a 30-second farm market report on certain specific newscasts (certainly not on the 24 newscasts a day) would fill the bill.

"Herb, please give your serious attention to this. I am not anxious to run afoul of the FCC.

"By now, you have undoubtedly received a copy of the program schedule which we submitted to the FCC. You will note that KRLA intends to:

28/ Heiman, as previously noted, had been hired on September 21, 1959, as a production director or manager.

[1363]

1) Set up a series of religious programs
and

2) Set up a series of public service talks
in the late evening

"Treating first with No. 2, perhaps the use of a public service announcement in a quarter hour, say from 10:30-10:45 p.m. nightly, will satisfy the FCC.

"Ed Schulz tells me that a public announcement in this period without any commercial announcements being included in the period designates the entire 15 minutes as public service. If this is so, are both of you fellows satisfied that we should not have to put a 15 minute talk in? I understand that the Smog Research Division of UCLA is prepared to give us material for one minute spot announcements which could be used in such a period and which would result in the 15 minute period being classified as public service. As I recall it, Dr. Hagen Smith is the professor or researcher in charge of the smog program and Mr. Jim Miller is the public relations counselor for that part of the university.

"As to the series of religious programs, nothing would please me more than to remove the necessity of broadcasting a round table of churches in the 11:00 AM to 12:00 noon period Sundays. If both of you fellows feel that we should have a religious program on the air and, whether we want a religious program on the air or not, we must broadcast one in order to conform with our promise to the FCC, why not put it on between 6:00 and 7:00 AM Sunday mornings? Would this pass muster? You will also note that KRLA has undertaken to broadcast a 30 second or 60 second message of religious good cheer each morning at 5:59 AM. My thought originally was to invite each clergyman in the Los Angeles area to prepare a 30 or 45 second inspirational message. If we had a back log of 50-100 inspirational messages, they would not wear out their welcome too soon. "I am anxious to get your reaction to this memo.

Yours very truly

Sgd/ Don

DC:dmc" (Emphasis not supplied.)

68. Prior to the above memorandum's introduction into evidence, Don had testified that the religious programming he had proposed in the

assignment application is the kind of programming that identifies a radio station with the community it serves. In explanation of the statement in the memorandum regarding religious programs (next to last paragraph) Don testified:

[1364]

"... We had lost a great deal of money at KRLA. Ed Schulz was involved in the losses as general manager, and I asked him for the simple reason I felt that perhaps the 11:00 to 12:00 noon period Sundays could be sold commercially for at least the time being to get us out of this terrible loss position."

Schulz replied to Don's memorandum, saying that with regard to the agricultural programming KRLA would insert a 40 second market roundup in the 5:55 and 11:55 AM newscasts. In addition, Schulz planned to broadcast two 2-minute "featurettes" a day, directed to housewives, explaining the "Best Buy" in produce. Schulz informed Don that this programming would satisfy KRLA's obligations insofar as agriculture was concerned. In the assignment application, Eleven Ten had promised to broadcast a 1-hour program each week designed for a farm audience, not for a housewife audience. In addition, Eleven Ten promised to broadcast information such as farm market prices and weather conditions of interest to farmers on every newscast 24 times a day.

69. In response to Don's query about quarter-hour "public service" segments, Schulz under date of October 5, 1959, replied that KRLA would insert one single minute "public service" spot announcement in a sustaining quarter-hour. The remaining 14 minutes would consist of the playing of the Top Forty tunes, and KRLA would log the entire 15 minutes as public service programming. Schulz informed Don, "we do not have to fill the entire 15 minutes with gab" (emphasis not supplied). Schulz stated that KRLA would be able to perform a saturation-type campaign for public service organizations doing a "... resultful job for them"

instead of the scattershot approach practiced by other stations. Schulz also stated that the station had turned down \$115,000 in commercial religion ". . . true to our word to the FCC. . ." and that the station was arranging for "Religious Featurettes" using a rotating group of spiritual leaders. Schulz also reported to Donald that the station had no substantial accounts and was faced with heavy termination payments to members of the staff. [98, 99, 100]

70. Heiman replied on October 4, 1960, to Don's memorandum, stating, among other things, "We are incorporating thirty seconds of a morning newscast to a Farm Fair . . . of interest mainly to the consumer rather than the farmer." Heiman also reported to Donald concerning publicity for high-school football and pinpointing weather forecasts of specific areas. [101]

71. Schulz addressed a memorandum dated October 15, 1959, to the employees of Donald Cooke, Inc., the sales representation organization, which sold advertising time for KRLA. As stated above. Don and Jack are both 50% shareholders in this corporation. The memorandum stated, in part:

"SCHEDULING: Here is an important fact . . . KRLA Radio is the ONLY LOS ANGELES STATION to block program its

[1365]

personalities in the same time slot SEVEN DAYS A WEEK! Yep . . . that's right . . ., only on KRLA can you hear each and every personality at his regular time ON SUNDAY TOO! This unique programming schedule has been arranged at GREAT EXPENSE to the management. ***

"SUNDAY RADIO: You might ask yourself why we have gone to trouble of duplicating our Monday through Saturday schedule on Sunday . . . something very few stations do. Well, in Los Angeles . . . SUNDAY IS A BIG RADIO DAY. Yes, there is a city on wheels the size of Detroit every Sunday from 9 AM to 11 PM in metropolitan Los Angeles. KRLA's listeners are on the go everywhere, in their cars, at the beach, with their portables, fishing to the lakes or ocean. Remind your clients too . . . when they call for a Monday through Saturday schedule to ADD MORE SPOTS to cover that all important SUNDAY RADIO AUDIENCE IN LA.! And ONLY KRLA can offer complete personality programming all day Sunday uninterrupted by commercial religion."

72. Don testified that the duplication of KRLA's Monday through Saturday programming on Sunday took place with his approval. He said:

"At this time, because sales had been so bad, I was almost willing to do anything to get the sales on the radio station, and if [the duplication of the Monday through Saturday programming on Sunday] would help, I would go along until we got to the point where we didn't have to borrow or suffer these terrible losses."

After testifying that the duplication of programming was designed to recoup KRLA's losses, Don later stated that the memorandum meant that KRLA's ratings would improve by carrying a 7-day Top Forty music format and that the purpose of the memorandum was not "particularly" to get more advertising revenue on KRLA.

73. Don came to Los Angeles on November 9, 1959, to improve KRLA's advertising revenue since the station was losing money, and he remained until November 20, 1959. In addition, he testified, he felt that the "public service programming" of KRLA ought to begin. At this time, insofar as "public service programming" was concerned, KRLA had a 40-second market roundup in the 5:55 and 11:55 newscasts, and two 2-minute featurettes, as noted above, were directed to housewives, but they were classified as agricultural.

73A. As early as November, 1959, Heiman entered into conversations with representatives of religious organizations in the area looking toward the production of programs in their behalf. The occasion was the production of a program which was entitled "Spirit of Today" which embodied religious messages but was not in the nature of a religious service. This program was in response to a conversation he had with

[1366]

Donald Cooke in which the latter specifically called his attention to the need for development of public service programs. Pursuant to these plans and conversations, Heiman contacted a number of religious groups, by letter and personally, offering them the facilities of the station and inviting their cooperation. The first program of the "Spirit of Today" was broadcast on December 5, 1959. Conversations leading to this broadcast were held with the religious group, Pacific Bible Seminary, at least ten days to two weeks prior to the air date. In line with its representations in the transfer application, the station in September, 1959, entered into negotiations with the March of Dimes Foundation which eventually culminated in programming for that organization. In October, 1959, KRLA contacted the Lake Avenue Congregational Church in connection with programs which were carried by the station beginning in January, 1960. In addition, as early as June, 1959, the station carried spot announcements for the National Safety Council. Beginning as early as October 11, 1959, KRLA carried public service promotions for such institutions as the Boys Republic, the Fire Prevention Week, Muscular Dystrophy Union Rescue Mission, Foster Parents, Big Brothers, Good Will Industry, Civil Air Patrol, Income Tax Information, Multiple Sclerosis, Diabetes, Cancer, Boy Scouts, National Guard, etc. These public service promotions were predominantly live. They were carried as often as twenty-one times a day. The station was also, by that time, carrying "Crime Beat" an eight-times-a-day program featuring live and transcribed messages from the FBI and

local police. The program was begun two months before Don's arrival. The station was also by that time carrying "Entertainment Compass," a six-to-ten-times-a-day program featuring a calendar of events, art shows, theater openings, athletic events. This program was begun on October 17, 1959, and was comparable to the description of "Town Crier" contained in Exhibit 11, p. 2, of the transfer application.

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74. Commission's Section 309(b) letter. On December 16, 1959, the Commission addressed a Section 309(b) letter to Eleven Ten. The letter stated, in part:

"It appears from a review of the above documents and other pertinent information contained in the Commission's file on Station KRLA that you are not operating your station in accordance with the programming proposals made by you and considered by the Commission in connection with its approval of the assignment of license (BAPL-171) earlier this year. Additionally, a question exists as to whether you intended to carry out the representations made in your Statement of Program Service submitted with that application.

"A review of the logs submitted by you for the week of October 18 to October 24, 1959 (as requested by the Commission's letter of October 28, 1959) indicates that you may have falsified the program logs for each of the seven days mentioned above by the addition of certain religious programming to the entries of other programs actually broadcast on those dates.

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"You were advised in the Commission's letter of October 28, 1959, that information had been brought to the attention of the Commission which indicates that on September 4, 1959, Station KRLA broadcast announcements by Perry Allen -- or someone purporting to be

Perry Allen -- which stated that the listeners should look for Allen in a Los Angeles restaurant and 'identify' him so as to win \$9,000. You admit that on the date in question Allen was actually still working for a station in Buffalo, New York. A question is raised as to whether your conduct of this contest constitutes an improper use of your facilities inimical to the public interest.

* * *

"An inquiry conducted by the Commission indicates that Jack K. Cooke, a Canadian citizen, inaugurated the present programming format utilized by Station KRLA; that Jack K. Cooke has changed his residence to the Los Angeles area and is active in the day-to-day management of the station; that at the conclusion of the 'Find Perry Allen' contest mentioned above, the 'finder' telephone KRLA and was referred to Jack K. Cooke who advised him to fly to Los Angeles with Allen 'for a big publicity splash'; and that disagreements, arising out of Jack K. Cooke's participation in station operations, existed between him and certain station staff members in matters of the station policy and management. It appears that these activities constitute actual control of the station, by Jack K. Cooke, contrary both to the provisions of Section 310 of the Communications Act, and to the representations by Donald R. Cooke with respect to the ownership and control of the station made in your assignment application (BAPL-171)."

The letter stated that a reply from Eleven Ten was required within thirty day.

75. Programming Steps Taken by Eleven Ten as a Result of Commission's 309(b) Letter. By letter-memorandum dated January 4, 1960, Don wrote Heiman " . . . I want very much to put our public service house in order, exacting order, well before January 15th. I say this because I hope to include my response to the FCC letter of December 16, a

fulfillment of the promises of my FCC submission of November 20, 1958."^{29/} The memorandum is devoted to a recapitulation of the program representations made by Eleven Ten in its assignment application and its failure to fulfill these representations. Don instructed Heiman to initiate the programs proposed in the assignment application. More specifically,

^{29/} Don is referring to his programming representations made in the assignment application.

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Don instructed Heiman to schedule: (1) a church service from 11 to 11:55 a.m., each Sunday "beginning at once"; (2) "within twenty-four hours", a 1-hour weekly "farm audience program," as promised in the assignment application; (3) "beginning at once," 30 seconds of farm information on every newscast, 24 hours a day; (4) as soon as possible, preferably well before January 15, Town Hall at 10:45 p.m. nightly, as promised in the assignment application. Don also instructed Heiman that he would be expected to begin to produce the educational shows promised in the assignment application, only, however, after he had carried out the above instructions. Don told Heiman that in connection with Eleven Ten's "failure to broadcast these particular [Education] shows" he would "beg the indulgence of the Commission" and promise to have them on the air as soon as they could be produced.^{30/} Donald also told Heiman that he wanted "Spirit of Today" from 6:00 to 6:30 a.m. and 11:00 to 12:00 midnight. [107]

76. On January 8, 1960, in a "Progress Report" Heiman replied that he was " . . . proceeding posthaste on all [Don's] requests."

77. By letter dated January 13, 1960, Eleven Ten, asked for an extension until February 15, 1960, to reply to the Section 309(b) letter of December 16, 1959. The primary reason given for the requested extension of time was Don's desire to " . . . personally verify the information which will be submitted in response to the Commission's inquiry which he cannot do without spending an extended period in California." By letter dated January 15, 1960, the Commission extended the time for filing a reply until February 15, 1960. The full text of the KRLA letter is set forth:

"January 13, 1960

Miss Mary Jane Morris, Secretary
Federal Communications Commission
Washington 25, D. C.

In re: Eleven Ten Broadcasting Corporation
Reference 8419

Dear Miss Morris:

"Reference is made to your letter of December 16, 1959, addressed to the above-entitled licensee to the attention of Mr. Schulz. Your letter requested a response within thirty days to various matters involving the activities of the station during the period September and October and raised a question as to what the Commission might anticipate insofar as future operation of the station is concerned.

30/ Don was referring to the following programs proposed to be broadcast on Sunday: 7:30 to 8 a.m. -- Report on Education, 8:31 to 9 a.m. -- School Speaks, 10:31 to 11 a.m. -- Youth Talks.

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"A complete investigation has been made by Mr. Donald Cooke, principal stockholder of the licensee, of all of the questions posed by the Commission in its letter. Upon the basis of this examination, it is believed

that each of the questions can and should be resolved in the favor of the licensee. However, it is the desire of Mr. Cooke to personally verify the information which will be submitted in response to the Commission's inquiry which he cannot do without spending an extended period in California. The pressure of other business matters and the intervening holidays have prevented Mr. Cooke from doing so prior to the present time, but he now plans to go to California as of the week of January 17. It is his intention not only to personally verify the information that has been forwarded by his staff but also to assume immediate supervision of the day-to-day operation of KRLA for such period of time as may be necessary to insure himself that the operation of the station is fully in accord with his responsibilities as a licensee. Mr. Cooke will remain in California for as long as is necessary to establish that the operation of the station is in full accordance with his representations to the Commission. He will continue to personally supervise the day-to-day operation until he is satisfied that the operation and staff has become sufficiently stabilized to operate in a satisfactory manner in accordance with his desires and responsibilities as a licensee. By this it should not be implied that Mr. Cooke believes that KRLA has not operated in the public interest, but he acknowledges that the operation should not even give rise to questions however satisfactorily they may be answered.

"As indicated, it is believed that the information which is presently on hand would fully serve to answer the Commission's letter, but in view of the extreme gravity with which Mr. Cooke views the Commissions' inquiry of December 16, he does not wish to submit a response until he has had a full opportunity to satisfy himself of the complete accuracy of all of the information that will be submitted by him. It is earnestly believed that reasonable extension of the time within which the licensee shall submit a response to the Commission's letter of December 16 would serve the best interests of the Commission, the public and the licensee. This action will make it possible for the licensee not only to answer the questions raised by the Commission but to submit additional proof with respect to the past, present and future operation of KRLA.

"It is, therefore, respectfully requested that the Eleven Ten Broadcasting Corporation be granted until February 15 to file a response to the Commission's inquiry.

"If there are any questions in respect to this matter, please communicate directly with the undersigned.

Very truly yours,

PIERSON, BALL & DOWD

Thomas N. Dowd" [108]

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78. The purpose for the one month extension was to obtain more time to enable Don to submit evidence that the programming proposed in the assignment application was, in fact, being broadcast over KRLA. He wanted the "full complement" of programs specified in the assignment application to be on the air by January 30, 1960, "at all costs." Don arrived in Los Angeles on January 22, 1960, and returned to New York on February 10. The main reason for this trip was " . . . to set up a so-called crash program, to get everyone of the public service features we have promised the FCC into effect on KRLA."

79. Eleven Ten's Response to Commission 309(b) Letter and Programming Amendment. On February 15, 1960, the Commission received Don's sworn response to the 309(b) letter of December 16, 1959. As part of his response he submitted an affidavit of Wheatley and an "affidavit" of Schulz. Schulz's "affidavit" was titled "Draft No. 1 - Revised No. 1." It responded in some degree to every question raised in the 309(b) letter. The notarization on Schulz's affidavit is dated February 8, and on February 9, 1960, he left the employ of Eleven Ten. ^{31/} Don testified he has no explanation why the affidavit is entitled " Draft No. 1 - Revised No. 1," nor does he know whether Schulz was told this document was to be only a draft and not an "affidavit." ^{32/} Donald Fry,

the accountant for Eleven Ten, notarized Schulz's "affidavit," but did not see Schulz sign the "affidavit," nor was Schulz present when the notarization took place. Fry recognized Schulz's signature and notarized the affidavit at Donald's request. [B.B.6]

80. As part of his response to the 309(b) letter, Don also submitted program information " . . . which reflects the manner in which the station is carrying out its original representations made to the Commission at the time it requested approval of the assignment." This information was furnished as an amendment to Eleven Ten's application for licensee renewal received on February 15, 1960. As part of the amendment KRLA submitted a new Part IV of the renewal application which included an analysis of the week of January 31, 1960, to February 6, 1960, prepared by Heiman. It specified the following breakdown:

Entertainment	81.1%
Religious	2.5
Agriculture	2.7
Education	2.0
News	8.9
Discussion	0.3
Talks	2.5

31/ It is a matter of dispute, now pending before the California courts whether Schulz resigned or was discharged. Don testified that "he resigned" (T. 894).

32/ On cross-examination, Don testified that he was present when Schulz's affidavit was prepared and signed. He later stated that he did not recall that he was present when Schulz signed the "affidavit."

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81. As part of the February 15, 1960, amendment, there was an exhibit entitled "Agriculture in the News," which stated:

"Two newscasts a day will have the majority of their content devoted to farm news. They will be broadcast at 5:55 AM and 1:55 PM and will be 4 minutes, 30 seconds in length. This policy was initiated approximately in October, 1959, with the 1:55 PM report given at 11:55 AM. The change to 1:55 PM took place the week of January 18, 1960. A complete agricultural weather forecast is included in each of these newscasts.

"Thirty seconds of agricultural news will be included in every newscast aired on KRLA. This policy was not strictly adhered to prior to January 8, 1960; however, it has been fulfilled from that date on. The content includes pertinent local and national news developments that would interest local farmers and livestock breeders in the southland. Stock, grain and poultry exchange prices are quoted daily."

82. Though it was stated that there were 4 minutes and 30 seconds of newscasts "devoted to farm news," described as a policy initiated approximately in October, 1959, in a letter from Schulz to Don dated October 5, 1959, he wrote only that there would be broadcast over KRLA " . . . a 40-second market roundup in the 5:55 AM and 11:55 AM newscasts." [111]

83. As noted above, it was stated that the policy of broadcasting 30 seconds of agricultural news on every newscast was not strictly adhered to prior to January 8, 1960. Don had written Heiman and Schulz on October 2, 1959, that "I think a 30-second farm market report on certain specific newscasts (certainly not on the 24 newscasts a day) would fill the bill" (emphasis not supplied). Heiman replied, "We are incorporating thirty seconds of a morning newscast to a Farm Fair . . . of interest

mainly to the consumer rather than the farmer." Subsequently on October 25, 1959, Heiman again wrote that agriculture news would be broadcast but twice a day.^{33/}

84. In the amendment submitted on February 15, 1960, under the category of agriculture, KRLA listed "Best Buy of the Day."

"Once per day, Monday through Friday, between 11:30 and 11:45 AM the show the Best Buy of the Day is aired. This sixty second presentation began October 15, 1959. Its purpose is to help Southland

^{33/} For some unknown reason Eleven Ten referred to agricultural news as "Public Service."

shoppers find what farm products arrive in Los Angeles in the greatest quantity and quality so they may better prepare their shopping list. This information is supplied by Mr. Cleveland of the Federal State Market News Service. It is proposed that shortly, with his cooperation, KRLA will air two four-minute, thirty second shows direct from the Produce Warehouse in Los Angeles."

This program, Heiman admitted, was not properly classified according to the Commission's definition as set forth in the application. The February 15, 1960, amendment also specified KRLA Farm Roundup as Agricultural. This program was described as follows:

"KRLA Farm Roundup:

"The KRLA Farm Roundup is a fifty minute program aired each Monday morning from 5:00 to 5:50 AM. It made its first appearance on Monday, January 11, 1960. The Farm Roundup is a show composed of live and transcribed agricultural information and recorded music. The live portions include weather conditions and frost warnings; the latter specifically for each of the citrus crops.

Complete weather forecasts for each of the agricultural districts are given by the announcer on duty. He also gives a weekend stock exchange roundup and pertinent local and national farm news. The transcribed portions include comments by:

"Dr. C. M. Hardin, President, American Association of Land-Grant Colleges and State Universities, and Chancellor University of Nebraska.

"Dr. J. W. Fitts, President, Soil Science Society of America, and Head, Department of Soils, North Carolina State College.

"Dr. C. F. Sprague, President, American Society of Agronomy, Research Agronomist, Agricultural Research Service, USDA.

"Carl E. Rose, President, National Association County Agricultural Agents in cooperation with the Farm Radio News Service and such persons as Edward Holter of the National Grange, Administrator Clarence Ferguson of the Federal Extension Service and Senator Eugene McCarthy of Minnesota plus many more in cooperation with the Farm Outlook for 1960."

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The amendment was received by the Commission on February 15, 1960, and Farm Roundup was represented as having begun on January 11, 1960. It is not clear from the record whether the transcribed portions were broadcast over KRLA directly before or after February 15, 1960. ^{34/} Heiman never heard the program broadcast. Perry Allen was the disc jockey on duty in January and February on Monday from 5 to 6 a.m., when this program was carried, and Heiman instructed him to broadcast the transcriptions of the various persons whose names are set forth in the above quotation.

85. On several occasions Heiman gave Allen "discs, transcribed spots of varying length," and asked if he thought they would be usable on the air. Allen said he had read the amendment filed on February 15, 1960, which states the transcriptions were broadcast, and that he did not recall having broadcast any of the transcriptions mentioned in the previous paragraph.

86. Although Farm Roundup is classified as agricultural, a satisfactory showing was not made as to the time devoted to the broadcast of agricultural information, news, or weather. However, within a 15-minute segment of Farm Roundup about 3 minutes of farm information was broadcast. The program contained "bits" of agricultural information which would not be broadcast during a normal disc jockey program.

87. On January 11, 1960, Don directed Heiman to " . . . obtain, in every instance, letters from all sources that will be of benefit to KRLA in the matter of public service, religion, education, etc." On January 13, 1960, in a letter to Schulz, Don wrote, "The importance of these local church services cannot be minimized since we expect the Ministers, Priests, and Rabbis, to send us warm letters of thanks and acknowledgement of the services rendered by KRLA." Twelve public witnesses testified, on behalf of Eleven Ten, to the excellent service provided their organizations by KRLA. (Only three of the organizations these witnesses represented were contacted prior to the Commission's 309(b) letter of December 16, 1959).

88. On April 6, 1960, Heiman's Progress Report to Don stated, in part:

"RELIGION AND PUBLIC SERVICE:

"We definitely must do something about Sunday. This involves moving our block of discussion and religion to the period 6:00 AM to 10:00 AM if at all possible. I will approach Don Robinson this week to investigate the possibilities of a delayed broadcast or,

instead a broadcast of their evening service to free us from the 11:00 to 12:00 period for the summer. I propose the following schedule:

34/ Allen had broadcast the program since January 11, 1960.

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<u>PROGRAM</u>	<u>TIME PERIOD</u>
Sound of His Music	6:00 - 6:15
Rosary	6:15 - 6:30
Seminar	6:30 - 6:55
Religious News	6:55 - 7:00
Spirit of Today	7:00 - 7:30
Scope Unlimited	7:30 - 8:00
Lake Ave. Congregational Service (DB)	8:00 - 9:00
Mass	9:00 - 10:00
Perry Allen (etc)	10:00 - 12:00

"Would it be possible to put Scope Unlimited and either Seminar or Spirit of Today on hiatus for the summer? How about California for the Summer? Due to the nature of the program, Topic Youth as we know it must be off for the summer."

89. In explanation of this memorandum Heiman said " . . . I felt that when summer would be upon us that there would be a tremendous amount of people going toward the beach and to resort areas. I felt that if we were not on their car radios by 10:00 in the morning that we would lose this portion of the audience for the rest of the day."

90. Don, in a memorandum to Heiman, dated April 12, 1960, about 55 days after he had submitted a response to the 309(b) letter, stated:

"DONALD COOKE, INC.

Inter-Office Correspondence

"Herb Heiman
Pasadena, California

From: Don Cooke
New York

April 12, 1960

"Dear Herb:

"It was very good to talk with you on the phone today. There isn't any doubt that KRLA is the most talked-about station and will be the most listened-to station in Los Angeles.

"Just to confirm my feelings about the Sunday religious and public service programming, before doing anything, the following points should be answered in the affirmative:

1. Tommy Dowd should be consulted and should approve the move -

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2. No move should be made until about a month after the FCC has approved KRLA's request for its license renewal.

"At that time, undoubtedly, we will be able to drop some of the present programming, but we will only do so with the full approval of Pierson, Ball and Dowd, of course.

"Looking forward to hearing the tape on KABL. Thanks,

Best regards,

sgd/Don

DC:duc"

91. In explanation of this letter to Heiman, Don expected the FCC to renew KRLA's license before April 12, 1960, but that:

"The reason for the letter itself was we were coming into the summer month, and the schools, the public schools, the high schools and the colleges would no longer be in session, which would make it extremely difficult for us, if not impossible, to continue such shows as California, Topic Youth, and Seminar."

In this connection, the eight programs broadcast in the period on Sunday from 6 to 10 a.m., 6 were religious programs, and of the educational type programs, only Seminar was broadcast during this period. The above explanation would explain only the discontinuance of the program, "Seminar." [120]

92. Perry Allen Contest - Licensee's Investigation and Report to Commission. On October 28, 1959, the Commission asked KRLA to supply it with full details concerning the Perry Allen Contest. Don, in late October or November, directed Schulz to check thoroughly regarding the details of the matter. Schulz called a meeting of KRLA employees. Don Cole told Schulz, in substance, what is reflected in previous findings. In a sworn response dated November 10, 1959, Schulz replied on behalf of KRLA. The letter said, in part, that in late August Allen was hired and he was expected to report for work at KRLA by September 5. The letter further read:

"In order to promote Allen's arrival in Los Angeles and the start of his new program on KRLA Radio, we began a 'Find Perry Allen' Contest on KRLA Radio the afternoon of September 3. It was our intention to bring Allen across the country, making occasional stops en route, and have Allen make beeper telephone reports as to

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the progress of his trip across the country, at the same time giving 'clues' as to his whereabouts and clues as to the time and place of his arrival in Los Angeles."

* * * * *

"We must state categorically that the 'Find Perry Allen' contest on KRLA Radio was a legitimate, bona fide radio promotion contest produced on the air to publicize the Perry Allen show on KRLA Radio to listeners in our coverage area."

* * * * *

"In regard to the paragraph in the Commission's letter concerning an announcement promoting the contest which implied that Perry Allen was in Los Angeles when, in fact, he was still in Buffalo, this ad lib statement went beyond the fact sheet used in the contest."

* * * * *

"It had been the intention of the station to broadcast specific clues as to Allen's whereabouts, but the contest did not last long enough to make this possible. * * *"

93. In Don's sworn response to the 309(b) letter he stated:

"Insofar as the Perry Allen promotion contest is concerned, I have made as complete an investigation as the circumstances permit. For the most part I uncovered little beyond that reported by Schulz in his response of November 10, 1959. . . . Whatever the reasons may be, I cannot affirm or deny that some of the announcements may have indicated that Allen was at the time in Los Angeles, since the continuity is not available To the best of my ability I have endeavored to furnish full and complete information [in this statement]." The station paid the prize to the finders of Perry Allen.

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94. Around the date of the contest, Jack told Don that Allen could not report to KRLA until September 12, 1959. Nevertheless, Don said, he still authorized the contest, but the "details" were worked out by the programming department. Jack and Don discussed "the over-all philosophy" though not the details of the contest. By that, Jack meant that the Perry Allen contest was designed to stir up interest in KRLA's call letters, in its frequency, and in Allen's name. All Don knew of the Perry Allen contest was that he gave his permission that it be conducted.

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Don read about the contest in Broadcasting Magazine's issue of September 14, 1959. Since Schulz was the general manager, Don checked with him to find out what had actually occurred. In a telephone conversation after the Broadcasting Magazine was published, Schulz told Don that it was an ad lib remark by one of the announcers that caused the "trouble." Don called upon Schulz for a full written report of the incident. He said he believed he had a copy of Schulz's report. After Broadcast Bureau counsel requested that this report be made available, Don then testified that he did not ask Schulz to provide him with a written report at this time, and said he first asked Schulz for a written report at the end of October or in the beginning of November. [124]

95. Soon after Don spoke to Schulz, he spoke to Jack, who told him that tapes of Allen's voice were made; that there were announcements throughout the day by all the disc jockeys; but that Jack could not recall that any of them had actually specified Allen "was anywhere but in Buffalo or at some other area." Jack did not inform Don, according to the latter's version, that he had issued instructions to the disc jockeys to ad lib so as to indicate that Allen was in Los Angeles. Don claimed to have been informed by Jack that when the announcements began, Allen could not possibly have been in Los Angeles, for Allen was not to come there until September 12. Before submitting his response to the Commission's 309(b) letter, Don went to Los Angeles in January with counsel, as they "wanted to thoroughly check the accuracy of the story which Ed Schulz had told [them]." In conducting this investigation they met with Allen, who according to Don, told them that he had sent tapes to KRLA, but that the only part of the contents of the tapes that Allen could recall were that they said "Listen for Perry Allen." Allen recalled a meeting with counsel in which he was asked about the Perry Allen contest, but he could not recall whether Don had been present. Allen claims that he

response to counsel's question "was fundamentally along the lines" he testified to in this proceeding, but he could not "recall the specific statements that I made at that time."^{35/}

96. In Don's investigation, it is claimed he and counsel checked thoroughly. However, Don did not personally speak to Don Cole, although Cole was still employed at KRLA, nor did he speak to Goodwin, who had left the station; Don did not personally ascertain whether Goodwin was still available for questioning. Don did not know if Cole was questioned at this time by counsel; but Schulz told Don that during the investigation Schulz conducted at the end of October or in November, Schulz got all the disc jockeys together to ask them the circumstances of the Perry Allen contest, and Don thought " . . . that . . . Cole would be in that meeting."

^{35/} See footnote 13/ above. The Broadcast Bureau's proposed findings from which these are adapted, states that "Allen" did not recall that Don had been present. Actually, Allen testified:

I recall the meeting with Mr. Dowd. I'm very unclear as to whether Mr. Cooke was present at that time. I just frankly don't remember. I do, however, remember the meeting with Mr. Dowd."

Obviously, Allen's testimony, if to be advanced as impeachment of Don's is even weaker than the Broadcast Bureau's version, for he did not recall that Don was present but whether he was, so that even his imperfect recollection is ambiguous.

97. During this investigation Don did not ask Jack about the contest, although Don testified at the time of the Perry Allen contest Jack had complete charge of programming. Don claimed not to have questioned Jack because Schulz had handled the response with the trade press and "seemed to be the most knowledgeable person on the staff at the time." Don testified he did not know that the idea and details of the Allen contest

were conceived by Jack. Although Jack told Don in advance he was going to run the Perry Allen contest in which \$10,000 could be given away, Jack did not say he had originated the idea of the Perry Allen contest.

98. With regard to Don's knowledge of contests broadcast over KRLA, during Jack's tenure as "program director," he testified that he approved the "promotions and contests that might possibly take place, "(though he left the details to the program department)"; and that he allotted \$50,000 to the KRLA budget for these ventures. If the \$50,000 was not adequate, money was to be taken away from some other classifications and put into these promotional contests. In Don's words, "This is one of the most important items we had at the time."

99. Thoughts or Words For the Day, Issue No. 3, Program Log Alterations. In Don's response to the question raised in the 309(b) letter regarding the falsification of KRLA's logs, he referred to Schulz's accompanying "affidavit" and stated he had no personal knowledge beyond what was contained in Schulz's statement. This issue in the designation order involves the question whether the words "Words for the Day" or "Thoughts for the Day" were added once on each of KRLA's logs for the week of October 18 to 24, 1959. The addition to the logs is listed as being two minutes in length and is classified as "Religion." Schulz, in his "affidavit" said the addition to the logs was "made to reflect what had actually taken place." Schulz's explanation was:

"The broadcast of 'Thought for the Day' as a regular feature commenced during the second week of October, 1959. Instructions were issued to the program department who carried out the instructions immediately by giving the necessary instructions to the announcers. Unfortunately the traffic department did not receive instructions to schedule these announcements on the program logs. When the analysis of the week of October 18-24 was completed it was noted that that analysis did not reflect any religious programming which we knew to be contrary to the actual facts. Pursuant to

my instructions the notation with respect to 'Thought for the Day' was added to the program logs."

100. Don learned of the alleged addition to the logs after receiving the 309(b) letter which raised this question. He, therefore, went to Los Angeles with his counsel in January, 1960, and questioned Schulz and Heiman together on this matter. Donald does not remember specifically whether he questioned Heiman, but he remembers questioning Schulz

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thoroughly. According to Don, he did not address his inquiries to Heiman, because Heiman was young, and he considered Schulz, as general manager, to be the responsible party. Schulz told him the programs had actually been broadcast, and since Schulz was the general manager, Don accepted his explanation. Heiman, though he knew Schulz's statements to be false, said nothing. Don testified to speaking to no other staff members about this matter; and that the first time he had reason to doubt the truth of Schulz's affidavit was about three weeks before the hearing began, when he was so informed by Heiman. Schulz's affidavit stated:

"Any decision with respect to this matter was made without instructions from or advice to Donald Cooke inasmuch as I did not feel that it involved a policy decision." Donald Cooke's reply was based upon his belief that the true state of matter was as represented in Schulz's affidavit and the representations which he had made to him. Donald Cooke had never issued instructions to Schulz to make these additions and had no knowledge prior to the Commission's letter that any additions had, in fact, been made. [129, 131]

101. In connection with this issue, Heiman testified that on the week end of October 31, 1959, he, Schulz and others, worked together to compile a program analysis for the week of October 18 to 24, 1959, for submission to the Commission. According to Heiman, Schulz remarked that there was no religion in the program analysis, and none shown in the logs, and that Schulz said that there should be some. Heiman testified that Schulz said with a wink. "I did tell you, didn't I, Herb, to put a 'Word for the Day' or 'Thought for the Day' on the air beginning that week, did I not?" Heiman testified that his reply to Schulz was "Something to the effect: If you say so." Schulz in Heiman's presence requested a staff member to type in the logs, "Thought for the Day" and "Word for the Day." Heiman testified that to his knowledge as program director, this program was not broadcast during the week of October 18 through 24, 1959; and that it was not until the first week of November that Schulz even ordered him to buy the book containing the material to be used for this "program."

102. Heiman wrote the following statement which he gave to two members of the staff of the Commission:

"August 31, 1960

"The statement below is true to the best of my knowledge.

"On the week end of October 30 and November 1st these people worked on gathering material for the FCC (logs of October 18, etc.). Ed Schulz, Mrs. Schulz, Janice Crosby, Elayne and Herb Heiman. On the night of Sunday it was called to my attention by Ed that we had a zero per cent in religion and that he had asked me to place in the studio a few weeks prior to that date, a book containing a message 'Thought for the Day.'

[1380]

"I could not find the book or original note left in the studio. I showed Ed the note's carbon and it was decided by him to attempt

to reflect that we had run a short religious message during the week of October 18th.

"Although the 'Word (thought) for the Day' was placed in the log hurriedly - an accompanying note was not sent to clarify the intent of placing the addition on the log. This was simply overlooked because of the extreme haste brought on by the November 14th deadline.

"There was no intent to perpetrate fraud or commit an act illegally to my knowledge.

Herb Heiman

"It was the consensus of those at the meeting that the 'Thought for the Day' must have been aired, however, I did not actually hear it on the air.

Herb Heiman

"Signed before me this 31 day of August, 1960.

Thomas B. Fitzpatrick

Lewis Cohen"

Prior to the signing of this statement, Heiman did not consult with any superior employee or officer of KRLA. Heiman did not disclose the truth to Don about the log incident sooner since during Schulz's tenure as general manager he felt the "responsibility of the details and facts were on Mr. Schulz's shoulders" and after Schulz left he "perhaps did not have enough moral conviction to confess, as it were, to my employer." He testified he had no intention of withholding the truth from his employer or counsel when "the time was right." [133]

103. In response to the question whether Heiman considered it more important to give the true facts to the Government of the United States (through Messrs. Fitzpatrick and Cohen) or to his counse, 36/

36/ Don first learned that the representations made by Schulz (that is, that the insertions were made to reflect programming actually carried on the air) were not correct about three weeks before the present hearing, when Heiman informed Mr. Dowd, KRLA's counsel, that the statement in the Schulz's affidavit was not entirely correct. Counsel then on his return to Washington immediately called the Broadcast Bureau and informed Bureau counsel that for the first time he had reason to believe that the affidavit which had been previously submitted to the Commission over the signature of Schulz, and a part of an Official Response filed on behalf of KRLA, was not true and correct. KRLA's counsel then related to Bureau counsel the substance of what was subsequently testified to by Heiman at the hearing.

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Heiman replied "I intended, as I said, to be elusive to the representatives of the Federal Communications Commission." 37/

37/ An investigator from the Commission visited the studios of KRLA. Before the visit, Schulz instructed Jacqueline Pressley, an employee of KRLA, to refuse to answer if she was asked if Jack was at the station or had been there. Schulz further instructed her that if she were asked if Jack stayed in Los Angeles, she was to answer that she did not know. Mrs. Pressley was asked by the investigator whether Jack had been at the station and pursuant to the instructions from Schulz, she did not answer. The instructions to Mrs. Pressley regarding investigations were given by Schulz and neither Jack Cooke, Donald Cooke, nor any other representative of Eleven Ten gave her such instruction. [134]

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CONCLUSIONS

1. Control Issue. Section 310 of the Communications Act of 1934, as amended, prohibits the holding of a radio station license by "Any alien or the representative of any alien," or "Any corporation of which any officer or director is an alien." The purpose of this statute "is to safeguard the United States from foreign influences in the field of radio, and it must be construed in the light of its purpose." Kansas City Broadcasting Corporation, Inc., 5 RR 1057, 1093; Noe v. FCC, 260 F.2d 739, cert. den., 359 U. S. 924. While Jack Kent Cooke, who is a citizen of Canada and not of the United States, is neither an officer nor director of the corporate applicant herein, Eleven Ten Broadcasting Corporation, this would, of course, not preclude the conclusion, if supported by the facts, that his participation in the affairs of the corporation violated Section 310 of the Communications Act, for the test is whether there was actual control. "Congress did not imply artificial tests of control," Rochester Telephone Corporation v. U. S., 307 U. S. 125, 145.

2. On the basis of the facts of record herein, it is determined that Donald Cooke, the controlling stockholder of record of Eleven Ten, had not surrendered his control thereof, and that Jack Kent Cooke did not, in fact, acquire or exercise such control contrary to the statute cited above. It is unnecessary to dwell unduly upon the dangerous tactic of setting up a lessor corporation (Broadcast Equipment Corporation) owned by Jack Kent Cooke, to hold the physical assets of the corporate applicant herein, for, beyond any question of brotherly affection, this gave him a strong financial interest to interfere in its affairs. The plan also offered him a formidable temptation to regard it as a temporary holding arrangement whereby Don would ostensibly operate the station, though really for Jack's benefit, until he became legally competent to take over in his own name. It is established that Jack had been intent on acquiring a radio property or properties in the United States, and that

price was not a controlling factor because of his substantial resources. While it was to be bought in the name of Don, a man of limited means, Jack ultimately was to become licensee of any station to be acquired. In the case of KRLA, this was at first hoped to be achieved by means of an option running to Jack, to be exercised when and if he became an American citizen. The option, however, was canceled after it was questioned by the Commission. The supposition that the cancellation did not, however, change Jack's hopes, is reinforced by contemplation of the generosity of Broadcast Equipment Corporation, supra, the lessor, regarding KRLA's rental, especially while the licensee laid out substantial sums of money for contest prizes; and it may be, despite Jack's claim that there is no understanding between him and his brother with reference to a future interest in KRLA not already disclosed to the Commission, that in his own mind, at least, he expects to take over the station when and if he can legally do so. However, the issue here must be decided on the basis of overt acts either pointing or not pointing to unlawful control, and not upon speculation as to a state of mind not manifested in operative acts.

[1383]

3. It was implicit in Don's attempt to conduct the affairs of KRLA largely from across the continent, a practice which cannot be commended, that persons on the scene would perform acts ordinarily the function of an owner, and would apparently be in control. Nor can the applicant be heard to deny that Jack's activities in and about the station, particularly with regard to the promotion contests, would in the absence of existing brotherly and financial ties, have been resented and repudiated as those of an officious intermeddler. Nevertheless, the one dispositive fact cannot be found to emerge from the evidence, namely, that Don had relinquished ultimate control to Jack. Whether Don had "enlisted," as the

applicant contends, the talents and experience of Jack to help him "bring order out of chaos and mediocrity," or Jack had drafted himself to protect his investment, is immaterial. In the discharge of his duties, Jack ostensibly must, upon this record, be held to have exercised authority similar to that which might have been vested in some other trusted employee charged principally with responsibility for the program department's operations. So far as programming was concerned, it was comparable to the authority given William J. Wheatley although, as noted in the findings of fact, Jack also performed duties which Wheatley had never assumed as program director. Wheatley continued in his position as program director, with his authority in abeyance during Jack's stay, and he reported to him instead of to Schulz, the general manager. Wheatley, however, resigned on September 9, 1959, and Jack remained until Herb Heiman reported for duty as production manager or director on September 20, 1959, when Jack left the station. From that date on, he did not return to KRLA, and there is no evidence that he has since given orders or instructions to any employee or participated in the direction or control of the operations of the station in any manner. Except for the periods and in the manner described in the findings of fact, it does not appear that Jack made decisions for the licensee or issued orders to its employees. To repeat what has already been suggested, while Jack's conduct during his stay at the station on the surface might not have been significantly different from an owner's, and he had apparently to the subordinate employees invested himself with an attitude of dominance, on analysis his intervention in station affairs is still seen to have been subject to Don's record legal control. That Don was indiscreet, and even foolish, in permitting his brother (who, he had indicated to the Commission, would not participate in the ownership or control of KRLA), to visit the station, let alone perform ambiguous acts, whatever the temptation because of the station's allegedly precarious condition, goes without saying. But while Don's judgment may be condemned, the record would not permit a conclusion that his good faith is to be impugned, for he is not shown to have

retired, in favor of his brother Jack or anyone, from ultimate control of KRLA. His absentee ownership presented dangers of misinterpretation even where ordinary employees were concerned, a danger which was intensified when one having so large a financial stake in the physical assets of the enterprise as Jack was involved. From these considerations, it must be concluded that since the time of the assignment of the KRLA license to Eleven Ten Broadcasting Corporation, Jack Kent Cooke, a Canadian citizen, has not exercised control with respect to the operations of the station in a manner which may be considered contrary to the provisions of Section 310

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of the Communications Act of 1934, as amended, and the Commission's rules and policies promulgated thereunder.

4. Programming Issue. This involves a determination of "whether, in light of its operations since it acquired Station KRLA, the licensee's program proposals contained in its application for Commission consent to assignment of the license ***" were made in good faith. Of necessity, the resolution of this issue requires a retrospective application of KRLA's operations to the question of intent at the time the applicant sought the Commission's consent to acquire the station's license. While it is obvious from the record, as well as from the pertinent facts herein found under this issue, that Eleven Ten did not adhere to its original proposals to the Commission with reference to programming, this fact would not in itself necessarily imbue with fraud, malice or deception the applicant's representations to the Commission in regard to projected program service. It is shown, upon the record that heavy financial losses requiring immediate recoupment forced a re-examination of the station's program schedule, and no reason implying a more vicious self-interest than an attempt to protect the applicant's investment has been developed by the

evidence. However, with this understandable stimulus to a program schedule which offered a greater financial return, it was not, as recognized by the Broadcast Bureau, "until five months after Eleven Ten assumed operation of KRLA" that "Don took the first action toward the abandonment of Eleven Ten's programming promises made in the assignment application." It is realized that, during this period, the station was still generally operating under the assignor's program format; nevertheless, the delay in the first affirmative step toward departure from the program proposals obviously would not strengthen, under the limited issue of "good faith," the Bureau's contention as to the presence of bad faith on the part of the applicant at the time the assignment application was prepared and filed with the Commission. It would appear to be unreasonable to infer, either from a change so long delayed or from representations in documents filed months after the assignment application was received by the Commission, that the applicant had not intended to carry out its original representations. While it did not raise program schedules to a more commendable level until prodded by correspondence from the Commission, this factor, in light of the foregoing analysis, is not material. In this connection, there was no evidentiary showing relating to the time of filing the application; and, as indicated, the fact that the applicant departed, or attempted to depart, from its programming representations, should not, in and of itself, receive reflexive dispositive significance to its prejudice under the limited issue which relates solely to "good faith" at the time of filing. It is to be understood, however, that the material departures, both attempted and realized, from the promises made in the assignment application merit severe condemnation, as do Donald Cooke's programming instructions to his staff, particularly those under date of April 12, 1960, which were not satisfactorily explained by him in this record. A suspicion at least lingers that his April 12, 1960, instructions were prompted by a desire to make only a temporary and token compliance with the programming representations contained in the assignment

application in an effort to forestall action by the Commission. Were the programming

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issue in this proceeding in terms of promise versus performance, a conclusion adverse to the applicant would, of course, be compelled.

5. The Find Perry Allen and Golden Key contests both represent a type of station operation which, if the broadcast industry is to continue maturing, should be relegated to oblivion. With reference to the Perry Allen contest, it is obvious from the findings of fact that it was conceived in cynical fashion to play upon the gullibility and cupidity of the audience, in the hope of gaining widespread quick publicity for the new KRLA. With arrogant disregard of the true facts, announcements were broadcast to induce listeners to believe that Allen was in Los Angeles and that the large initial prize was at least possible of attainment, when, in reality, he was across the continent at the time. Manifestly, the KRLA management intended to heighten the publicity effect by dangling, as it were, before the audience a great prize which it did not expect to pay. It thought, indeed, that it would be able to settle for a much smaller prize than that originally announced; but, through unforeseen circumstances, it was obliged to pay the full prize.

6. The Golden Key contest may be considered as akin to the Perry Allen contest. At the outset, it too offered the hope of a huge prize, although the station management knew that no one had a chance of winning until the prize had substantially dwindled in value, and would then by the use of leading language in the announcements, permit someone to locate the key and obtain the reward. It is also of particular significance that many continuous hours of broadcasting time were devoted to a series of irresponsible announcements of this and other contests, in disregard of the programming obligations which had been assumed by the applicant.

7. As a general matter, these contests are to be condemned. As program subjects they are found to be completely without merit. Both contests, and particularly the Perry Allen contest, were conducted in shabby and irregular fashion, and the station's program time was subverted to improper purposes. It appears, however, that KRLA has discontinued this type of operation, and for this reason its derelictions will be less stringently viewed than would otherwise have been the case.

8. Alteration of Program Logs. It is established that the KRLA program logs were altered improperly to reflect the broadcasting of short religious programs which, in fact, were not broadcast. The only possible purpose of this was to deceive the Commission. It appears from the evidence, however, that Donald Cooke was not aware of the mislogging until he received notice from the Commission. Thereafter, his investigation of the matter consisted of "thoroughly" interrogating Edwin V. Schulz (general manager) who informed him untruthfully that the programs had in fact been presented; and although Herb Heiman (program director) was aware of this misinformation, he failed to correct it. Cooke notified the Commission accordingly. He claims not to have learned that he had been misinformed by Schulz until a few weeks before commencement of hearing in this proceeding, and there is no evidence to refute his claim. Obviously, Cooke should have made a far

more detailed investigation of such an important matter than merely to question Schulz "thoroughly." Numerous other sources of information and methods of obtaining the true facts could and should have been explored by him. While Cooke is here held to have been neglectful of his duty properly to inform himself before reporting to the Commission in the matter of the alleged mislogging of religious programs, nevertheless responsibility for the initial misreporting to the Commission may not, on the basis of this record, be imputed to him or Eleven Ten Broadcasting Corporation of which he is the controlling head.

9. Short-Term Renewal. With regard to the final issue governing the proceeding, while the ultimate conclusion herein favors the applicant, as heretofore indicated this general ruling cannot be considered an approval of all of its behavior since it acquired Station KRLA, and it is here determined that Section 307(d) of the Communications Act Amendments, 1960, and Section 3.34 of the Commission's Rules authorizing short-term grants, find appropriate use in this proceeding. A renewal of license to KRLA for the full three-year period is not indicated, but a one-year renewal is appropriate and will serve the ends of justice and the public interest. This ruling is compelled by the detailed findings of fact and conclusions hereinabove set forth. In sum, the haphazardly directed nature of the station's operations after the Commission was advised, as an inducement for approving the assignment, of definite operational plans; the frantic and undignified promotional activities, supplemented by some days of continuous programming which publicized contests and ignored the station's other obligations to the public; the obviously inept absentee direction marked by programming irresolution; and the failure of Donald Cooke adequately to inform himself regarding program mislogging prior to submission of his report to the Commission, all betoken censurable managerial immaturity and operational short-comings. It is true that after admonition was received from the Commission, the station's program service improved; but whether Eleven Ten Broadcasting Corporation, under the record control of Donald Cooke, may in light of its past, be relied upon to deliver a meritorious service on a permanent basis in accordance with the requirements of the Communications Act and the Rules of the Commission, is a question which can be answered best after surveillance during the forthcoming short-term renewal period hereinafter specified. In this connection, the general competence of Donald Cooke to serve as a controlling head and principal policy maker of Eleven Ten Broadcasting Corporation may also be observed during this period.

ACCORDINGLY, IT IS ORDERED, this 20th day of April, 1961, that unless an appeal from this initial decision is taken to the Commission by either of the parties to the proceeding or the Commission reviews the initial decision on its own motion in accordance with the provisions of Section 1.153 of the Rules, the above-captioned application for license to cover construction permit is granted; and that the above-captioned application for renewal of licenses, insofar as they contemplate the regular three-year term, are

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denied, but are granted only to the extent that the said licenses are renewed for the term of one year.

James D. Cunningham and Herbert Sharfman
Hearing Examiners
Federal Communications Commission

Released April 21, 1961
and effective 50 days thereafter,
subject to the provisions of the
Rule (1.153) cited in the ordering
clause above. Exceptions, if any,
must be filed within 30 days of the
release date unless an extension is
duly granted.

[1395]

[F.C.C. Received April 18, 1962]

PETITION FOR REHEARING

Comes now the Lake Congregational Church of Pasadena, California, by its pastor, Raymond C. Ortlund, and respectfully petitions the Commission, pursuant to Section 405 of the Communications Act of 1934 as amended to rehear and reconsider its Decision and Order in the above entitled cause released March 19, 1962. Petitioner requests that the Decision and Order be vacated and that KRLA's license be renewed.

In support of this Petition for Rehearing, Petitioner alleges as follows:

1. Petitioner testified in these proceedings as a person who would be aggrieved and adversely affected if KRLA ceased its operations (tr. 172-183).

(a) Petitioner produces an hour-long live program, originating from the Lake Congregational Church on Sundays from 11:00 AM to 12:00 Noon. (Tr. 127). In the latter part

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of October, 1959, KRLA informally approached the Petitioner and inquired whether Petitioner would be interested in having its services broadcast. In December of 1959, the Board of Trustees of the Church approved the arrangements for such broadcasts. Petitioner commenced broadcasting its services on January 31, 1960 (Tr. 173).

(b) In order to make the services attractive and to hold the interest of its listening audience, Petitioner, through its pastor and others, established a radio room and equipped the same with "some very fine equipment". Personnel were trained and the services were improved to insure listener acceptability (Tr. 174).

(c) The response to the broadcast of the services has been very satisfactory. Petitioner has received numerous letters from the Southern California area, commending the services although no mail solicitations were ever made (Tr. 175-176).

(d) Petitioner testified that the broadcasts have been of real benefit to religion generally as well as to the Church; the broadcasts have had an impact and improved the relationships between the younger people and the Church (Tr. 176).

(e) Petitioner testified that to the best of its knowledge, there was no other Protestant service emanating from Pasadena from 11:00 A.M. to 12:00 Noon on Sundays on any radio

[1397]

station in the community except for the Pasadena Presbyterian Church which operates its own FM radio station (Tr. 177).

2. Petitioner alleges that as a religious organization serving its congregation, it would be aggrieved and adversely affected if it were deprived of KRLA's facilities, that the injury which would result would be of a direct, tangible and substantial nature. More importantly, Petitioner's listening audience which has been built up and cultivated over a period of years would be deprived of a unique and irreplaceable program service.

3. Petitioner is not familiar with the facts or reasoning which prompted the Commission's Order and Decision in this case; accordingly, it does not intend to participate in or pass judgment on the issues vis-a-vis the Commission and KRLA except with regard to the following:

4. Petitioner avers that it has received the full cooperation of Station KRLA in the production and broadcasting of this religious program as set forth in Paragraph 2 of this petition. Petitioner has been advised by its counsel that the Commissions' Decision contains no findings

of fact or conclusions of law pertaining to this program and its impact or effect on KRLA's listening audience. Petitioner recognizes that the Commission in exercising its licensing functions cannot be governed by a rigid mathematical formula with fixed and known ingredients. Petitioner assumes that the standard of public interest, convenience and necessity calls

[1398]

for an evaluation of many factors based upon the needs of the public served by this program. It is respectfully suggested that the Commission in the exercise of its adjudicatory functions should consider and evaluate Petitioner's program service and its impact and effect on the public interest, convenience and necessity. Cf. Re Westinghouse Broadcasting Company, Inc., 22 R.R. 1023, 1028 (1962).

5. Petitioner contends that the public service as exemplified by Petitioner's program service and the contributions and cooperation rendered by KRLA in effecting that program service constitute overweening consideration in the public interest which warrant a renewal of KRLA's license. Petitioner is of the opinion that no other radio station is in a position to furnish it with a comparable weekly schedule, time period and coverage as KRLA; that in view of the Station's past record of performance vis-a-vis Petitioner, KRLA's license should be renewed.

6. The filing of this Petition for Rehearing has been authorized by the Board of Trustees of the Lake Congregational Church, which has read the same and on information and belief allege that the facts stated therein are true and correct.

Accordingly, Petitioner, as a person who would be aggrieved and adversely affected and in behalf of its listening audience, respectfully petitions this Commission to grant this petition

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[1399]

for rehearing, reconsider its Order and Decision and grant KRLA its renewal of license.

Respectfully submitted,

LAKE CONGREGATIONAL CHURCH
OF PASADENA

By /s/ Harry P. Warner

Suite 224
9350 Wilshire Blvd.
Beverly Hills, Calif.

Its Attorney

[1401]

[F.C.C. Received April 18, 1962]

PETITION FOR REHEARING

Comes now the Immaculate Conception Church of Los Angeles, California, by Monseigneur Right Reverend Joseph J. Truxaw, and respectfully petitions the Commission, pursuant to the provisions of Section 405 of the Communications Act of 1934 as amended, to rehear and reconsider its Decision and Order in the above entitled cause, released March 19, 1962. Petitioner respectfully requests that the Decision and Order be vacated and that KRLA's license be renewed.

In support of this Petition for Rehearing, Petitioner alleges as follows:

1. Petitioner testified in these proceedings as a person who would be aggrieved and adversely affected if KRLA ceased its operations (Tr. 81-91).

(a) That the pastor of Petitioner has been associated with the Immaculate Conception Church for twenty-five years; that

[1402]

the parish is located in downtown Los Angeles and that 3500 people attend the Sunday services of this Church (Tr. 82).

(b) For fifteen years prior to January, 1960, Petitioner broadcast its services over Station KLAC (Tr. 83).

(c) Petitioner's broadcast has been designed to bring the High Mass service over the air to shut-ins, sanitariums, hospitals and people living at home who are invalids and are unable to attend services (Tr. 83). KLAC carried this program from 8:00 to 9:00 on Sunday mornings, which time period was satisfactory to Petitioner (Tr. 83-84). In January of 1960, Petitioner was advised that the time of the broadcast would be changed from 7:00 a.m. to 8:00 a.m., a time which was unsatisfactory to Petitioner's listening audience because at that time the sanitariums and hospitals were busy attending to the needs and wants of their patients (Tr. 84). Petitioner requested a different time but KLAC refused. In addition, KLAC imposed a charge for the services of a technician who would assist in the broadcast. As a result of the foregoing, Petitioner was unable to continue with KLAC (Tr. 84).

(d) Following the cancellation of the KLAC broadcasts, Petitioner received thousands of letters regretting the fact that the listening audience would be deprived of this program. Two weeks after the program had been cancelled, Mr. Donald Cooke approached Petitioner and offered the 9:00 A.M. to 10:00 A.M. time

[1403]

period on Sundays. This was ideal for the listening audience because it came at a time after the shut-ins in hospitals, and sanitariums had had their breakfast, etc. No conditions were attached by Station KRLA and Petitioner was further advised that all expenses would be absorbed by KRLA (Tr. 85-86).

(e) This program is broadcast each Sunday. This is the only station in California which carries the High Mass regularly. In the opinion of Petitioner, the program is " . . . doing a tremendous amount of good, consolation, too . . . " (Tr. 86). The services performed by KRLA are extremely valuable especially in view of the larger coverage afforded by the Station as compared with KLAC. Petitioner has received correspondence from all over California and even from ships at sea, telling of the reception of the Mass (Tr. 87-88).

(f) On cross-examination, Petitioner testified that broadcasts of this type program are worthwhile and that it would be a disservice now to discontinue this program (Tr. 89).

2. Petitioner alleges that as a religious organization and in behalf of its parishioners, it would be aggrieved and adversely affected if it were deprived of KRLA's facilities; that the injury which would result would be of a direct, tangible and substantial nature. More importantly, Petitioner's listening audience which has been built up and cultivated over a period of years would be deprived of a unique and irreplaceable program service.

[1404]

3. Petitioner is not familiar with the facts or reasoning which prompted the Commission's Order and Decision in this case; accordingly, it does not intend to participate in or pass judgment on the issues vis-a-vis the Commission and KRLA, except with regard to the following:

4. Petitioner avers that it has received the full cooperation of Station KRLA in the production and broadcasting of this religious program, as set forth in paragraph 2 of this petition. Petitioner has been advised by counsel that the Commission's Decision contains no findings of fact or conclusions of law pertaining to this program and its impact or effect on KRLA's listening audience. Petitioner recognizes that the Commission,

in exercising its licensing functions cannot be governed by a rigid mathematical formula with fixed and known ingredients. The standard of public interest, convenience and necessity calls for an evaluation of many factors based upon the needs of the public served by this program. It is respectfully suggested that the Commission in the exercise of its adjudicatory functions has failed to consider and evaluate Petitioner's program service and its impact and effect on the public interest, convenience and necessity. Cf. Re Westinghouse Broadcasting Company, Inc., 22 R. R. 1023, 1028 (1962).

5. Petitioner contends that the public service as exemplified by Petitioner's program service and the contributions and

[1405]

cooperation rendered by KRLA in effecting that program service constitute overweening considerations in the public interest which warrant a renewal of KRLA's license. Petitioner is of the opinion that no other radio station in Southern California is in a position to furnish it with a comparable weekly schedule, time period and coverage as KRLA; that in view of the station's past record of performance vis-a-vis Petitioner, KRLA's license should be renewed.

6. His Eminence James Francis Cardinal MacIntyre, Archbishop of the Archdiocese of Los Angeles, is cognizant of Petitioner's broadcasts and the service rendered over the air to shut-ins, sanitariums, hospitals and people living at home, who are unable to attend services. Cardinal MacIntyre has advised Petitioner that the continuation of this program without any interruption of broadcast service is extremely desirous and would be of great value not only to Petitioner, its members, but also to the listening audience numbering in the thousands.

7. Accordingly, Petitioner, as a person who would be aggrieved and adversely affected and in behalf of its listening audience, respectfully petitions this Commission to grant this petition for rehearing, reconsider its Order and Decision and

[1406]

grant KRLA its renewal of license.

Respectfully submitted,

IMMACULATE CONCEPTION CHURCH
OF LOS ANGELES, CALIFORNIA

By /s/ Harry P. Warner
9350 Wilshire Blvd., Suite 224
Beverly Hills, California
Its Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.

MONSEIGNEUR RIGHT REVEREND JOSEPH J. TRUXAW, being duly sworn on oath, deposes and says: that he has read the Petition for Rehearing; that he has been authorized to file this Petition for Rehearing and that the facts stated therein are true and correct to the best of his knowledge and belief.

/s/ Joseph J. Truxaw

[Jurat dated April 10, 1962]

MEMORANDUM OPINION AND ORDER

By the Commission:

1. The Commission has before it a petition for reconsideration filed by Eleven Ten Broadcasting Corporation on April 18, 1962, directed to the decision of the Commission released March 19, 1962, (32 FCC 706, _____ RR _____). The Decision denied Eleven Ten's applications for renewal of license of Station KRLA at Pasadena, California, and for license to cover its construction permit authorizing 50 kw power because the Commission was unable to make the necessary finding in light of the evidence adduced pursuant to the hearing issues that a grant thereof would serve the public interest, convenience or necessity. Eleven Ten requests that the Commission reconsider its denial or remand the proceeding for further hearing; it also requests oral argument on its petition. The Broadcast Bureau opposes all of Eleven Ten's requests.

2. Eleven Ten contends that the Commission erred in concluding that the Perry Allen and Golden Key contests conducted by KRLA were fraudulent in the sense that various clues broadcast over KRLA were deceptive and knowingly so. Eleven Ten argues that it was always possible to win the amount of the prizes offered on the basis of the clues broadcast, that in each contest there was a winner and that in each instance the winner was paid. In addition, Eleven Ten argues that the specific grounds on which the Commission rests its conclusion of fraud in the Golden Key contest are inconsistent with its own findings that Donald Cooke approved the allocation of an amount of money for that contest equal to the full amount of the prize originally offered and that the clues broadcast, although ambiguous, were always applicable to the Key's whereabouts. With respect to the Perry Allen contest, Eleven Ten argues that the fact that some of the clues may have been misleading

is not sufficient to declare Eleven Ten an unfit licensee particularly where Donald Cooke was unaware of the details of that contest.

[1546]

3. Eleven Ten's argument that the clues in the Golden Key contest were not deceptive since they were so ambiguous that they pointed to nothing is without merit. KRLA made a concerted effort to lead the public to believe that the substantial prizes initially offered in each contest could be won on the basis of the clues broadcast. As reflected in the Hearing Examiner's findings, that it was the closest thing to impossible to do so is not open to question. The fact that funds were allocated for the Golden Key contest, that prizes were paid on both contests and that there is no evidence that any listener was misled or deceived do not constitute mitigating circumstances. As to Eleven Ten's further contention that Cooke's ignorance of the details of these two contests absolves him of responsibility for the "chincanery" practiced in such contests, the Commission adheres to the views expressed in paragraph 6 of the Decision rejecting such contention.

4. Eleven Ten argues that the Commission attached undue significance to the log alterations and to the KRLA contests in assessing Donald Cooke's qualifications. First, it contends that even though the record shows that Donald Cooke had no knowledge of the log alterations until he received notice thereof from the Commission, the decision seeks by indirection to establish his guilt therefor by insinuating that if he had known of such alterations he might have countenanced them. Secondly, it contends that the decision, in a manner both arbitrary and capricious, imposes absolute liability upon Donald Cooke for the misdeeds of an experienced employee chosen with due care, without the knowledge or approval of his employer. Third, Eleven Ten challenges the Commission's

conclusion that the circumstances under which the aforementioned contests and the log alterations occurred indicate that Donald Cooke failed to maintain effective control of station operation and management for an extended period of time. Eleven Ten argues that because of personal reasons, Donald Cooke was unable to be in Los Angeles even though he recognized that the station was experiencing certain temporary difficulties; that, however, the record clearly establishes that in his absence he maintained continuous contact with the station and at all times exercised the decision-making functions of a licensee; and that the Commission has erroneously attempted to link the contests and log alterations -- which are not only isolated instances but the only two incidents in the first month of operation which warranted criticism -- to show a pattern of conduct which it characterizes as failure to exercise effective control.

5. Petitioner's contentions to the contrary notwithstanding, we did not impose upon Donald Cooke a standard of absolute liability for the misdeeds of others. Nor did we find that Donald Cooke would have countenanced the log alterations had he known of them. On the

[1547]

contrary, our decision rested upon the simple preposition that a licensee, knowing that his station "was in a mess," cannot leave town for months, leave actual operation and management of the station in the hands of others, and reasonably expect the Commission to close its eyes to what occurred during the absence of the licensee because of the latter's unawareness of what was happening. It was, and remains, our view that a licensee's lack of familiarity with station operation and management may reflect an indifference tantamount to lack of control; that the Commission must insist upon the effective exercise by the licensee of actual control over station operation and management; and that only by holding the licensee accountable for the operation and management of the station can there be any assurance that the operation and management will be

responsible.

6. The log alterations and chicanery practiced in the two contests were pointed to in our decision as illustrations of what may occur when, as in this case, the licensee does not exercise an effective sense of responsibility for station operation and management. We did not, and do not, say that Donald Cooke knew of or personally countenanced either the log alterations or the manner in which the contests were conducted.^{1/} What we did say is that in view of Donald Cooke's lack of effective control over the station, the log alterations and the contests cannot be dismissed as mere incidents which could occur even in the best managed operations. We are unimpressed by the petitioner's view that Donald Cooke's correspondence with station personnel while he was absent from Los Angeles demonstrates his sense of responsibility for station management and operation. That Donald Cooke did not fully and responsibly discharge his duties, notwithstanding the correspondence he had with station personnel, is reflected by the fact that although he knew and approved the general nature of the Perry Allen contest, he was unaware of its details when he authorized it.

7. A large portion of Eleven Ten's petition is directed against the Commission's conclusions that Donald Cooke is guilty of efforts to mislead the Commission. Eleven Ten challenges the facts upon which the Commission rests its conclusions from the standpoint of interpretation and semantics and maintains that the question of Donald Cooke's connivance and efforts to mislead the Commission is largely the result of a tortured marshalling of unrelated incidents based on language taken out of context and a juxtaposition of chronological events. Contrary to the

^{1/} The petitioner states that its counsel is prepared to testify, from his own personal knowledge, that Donald Cooke did not know of the log alterations until after they were made, and it requests that the record be reopened to receive his testimony to that effect. In view of our findings that Donald Cooke did not have any advance

knowledge of the log alterations, further testimony by counsel to that effect would merely be cumulative, and the request to reopen the record for this purpose will be denied.

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Commission's interpretation of Donald Cooke's October, 1959, memorandum, Eleven Ten defends the memorandum as merely questioning whether certain modifications in KRLA's programming could be made without raising a promise versus performance issue, contending that there is no indication that any such modifications would not be revealed to the Commission. It argues that Donald Cooke's proposal to limit KRLA's agricultural programming has been distorted completely out of perspective, that the real question involved is one of proper program classification which the Commission has either refused to resolve or has erroneously resolved, and that even if KRLA had dropped the entire one percent agriculture programming proposed, no significant breach of faith would have been committed. With respect to the other proposed modifications, Eleven Ten contends that there is even less ground for finding that they constitute a willingness to mislead and that the memorandum is not transformed into an effort to hoodwink the Commission merely because Donald Cooke regrets having ever proposed certain programs or because he expressed himself in various "trade vernacularisms". Similarly, Eleven Ten argues that the Commission erroneously concluded that the amendment to its renewal application which it submitted as the response to the Commission 309(b) letter contained numerous misrepresentations merely because it did not reflect all the program changes discussed in the October, 1959, memorandum or because it might raise certain questions as to proper program classification. With respect to the latter it argues that at worst, any misclassification merely represents a reasonable difference of opinion between the Commission and KRLA. Finally, it argues that the only possible legitimate charge of misrepresentation is based on the fact that a station employee could not recall

having broadcast certain agricultural tapes which were represented as having been broadcast while he was on duty. Eleven Ten argues that this charge is without merit, however, since it is inconsistent with the Commission's own finding that such employee was specifically instructed to broadcast the tapes in question. That the employee failed to recall having broadcast such tapes is of no moment, Eleven Ten argues, since he had amply demonstrated during the hearing that he was possessed of a faulty memory. Finally, Eleven Ten challenges our construction of Donald Cooke's April, 1960, memorandum on the ground that its very existence is evidence contrary to the Commission's view that Eleven Ten intended to abandon any of its proposed programming.

8. Upon careful consideration of all of its arguments, Eleven Ten has not persuaded us that our views concerning Donald Cooke's efforts to mislead the Commission should be altered. The facts upon which the Commission rests its conclusions in this area are set forth in great detail in paragraphs 8-12 of our decision, and notwithstanding Eleven Ten's elaborate attempt to explain them, such facts nevertheless remain unchanged. We believe that these facts admit of no reasonable

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interpretation other than that set forth in our decision and we regard Eleven Ten's attempt to explain away such facts or to dismiss the obvious problems raised thereby as mere differences of opinion or as the result of faulty memory as singularly unconvincing and inadequate. We adhere to the views expressed in our decision and reaffirm our conclusions that Donald Cooke is guilty of efforts to mislead the Commission. To conclude otherwise would require us to ignore the facts of record. Eleven Ten's request that the record be reopened to permit its counsel to testify concerning Eleven Ten's preparation of its response to the Commissions' 309(b) letter is not supported by any showing that it was

not given an adequate opportunity at the hearing to explain the discrepancies between the statements made in its response and other evidence of record (see paragraph 11 of the Decision); its request will therefore be denied.

9. A major objection raised by Eleven Ten is based upon an erroneous view that the decision was based on issues of which the applicant had no notice and that it was therefore deprived of procedural due process. The ultimate question posed by the hearing issues was whether a renewal of Eleven Ten's license would be in the public interest. Viewed collectively, the facts adduced pursuant to the good faith, Perry Allen, mislogging, and alien control issues can only lead not only reasonably and logically but inevitably to the conclusion that it is not in the public interest to renew petitioner's license in view of the absence of responsible management in the past and in view of the efforts made on behalf of the petitioner to mislead the Commission. Since the decision was resolved on the basis of the hearing issues and the findings reflect that Eleven Ten was given ample opportunity to explore the evidence adduced with respect thereto, Eleven Ten's request for further hearing on "ineffective management control" and "connivance with employees" issues will be denied.

10. In a similar contention of procedural error, Eleven Ten argues that consideration of the Golden Key contest is beyond the scope of the issues and deprives the applicant of procedural due process. The Commission has already denied an exception to that effect by Eleven Ten on the ground that the Perry Allen issue was designed to adduce evidence to aid in determining whether Eleven Ten operated KRLA for improper purposes; therefore evidence concerning any other questionable contest conducted by KRLA is material for the same purpose. In any event, consideration thereof has not deprived Eleven Ten of procedural due process since the findings of the Hearing Examiner reflect that it was given ample opportunity to be heard with respect to this matter and

this is consistent with Eleven Ten's own theory that the test of adequate notice is whether a party has had adequate opportunity to prepare its case.^{2/}

11. Eleven Ten also asserts that the Commission's treatment of KRLA is inconsistent with its judgment of other licensees. Eleven

^{2/} Davis, Administrative Law Treatise, Vol. 1, Section 8.04, 8.05, 8.06; Kuhn v. C.A.B., 183 F.2d 839 (1950).

Ten argues that it is impossible to reconcile the KRLA decision with Westinghouse Broadcasting Company, Inc., ^{3/} where the Commission granted the Westinghouse renewal applications without hearing despite its recent conviction for criminal anti-trust violations and its history of such anti-trust involvements. We disagree. In Westinghouse we were faced with the difficult problem of any applicant guilty of misconduct outside the broadcast field but with an outstanding service record as a licensee of the Commission. While the former weighed heavily against the applicant, the Commission concluded that the Westinghouse broadcast record was a countervailing circumstance warranting renewal of license. Here, at the outset, we are concerned with a service record of short duration, in contrast to the record of Westinghouse operation extending over many years. Moreover, unlike the situation presented in Westinghouse, in this case we are faced with gross misconduct in the broadcasting field, of a type which we cannot tolerate if we are to perform the functions which Congress has assigned to us. We do not think that a meritorious program record of the scope and nature which Eleven Ten claims can outweigh this consideration. Cf., Federal Communications Commission v. WOKO, Inc., 329 U. S. 223 (1946). In any event, the Eleven Ten record of operation prior to Commission inquiry -- even considering its meritorious aspects (see our ruling on Eleven Ten's Exception

No. 104) -- does not inspire confidence. Its record subsequent to Commission inquiry does not, as we have stated, provide assurance that the applicant can be relied upon to operate its station in the public interest at times when disposition of its renewal application is not in doubt.

12. Eleven Ten contends that the treatment of KRLA is also inconsistent with (1) Mile High Stations (KIMN) (20 RR 345 (1960)), where the licensee was permitted to remain on the air even though the owner thereof may have been delinquent in not discovering certain employees' misdeeds; and (2) the Commission's action in the WNOE, New Orleans, Louisiana, proceeding (Public Notice 18250), March 29, 1962), in which the Commission merely fined an owner-licensee who had no knowledge of his station's misdeeds even though it found that it was impossible for anyone to win more than \$100 in a continuous fifteen month contest publicized as having over \$1,000 prizes and that the station budget could not possibly have covered the cost of the contest if it had been legitimately run. Reference to each of these proceedings will establish that they are readily distinguishable from the instant case in that each of them was concerned with only one of the several factors underlying our determination that Eleven Ten does not have the necessary qualifications to be a Commission licensee.

13. A few final matters require our attention. Eleven Ten asserts that the findings in the Initial Decision as modified by the

3/ 22 RR 1023 (1962.)

Commission do not support its conclusions.^{4/} We disagree for all the reasons set forth above and for the reasons set forth in the Decision.

14. Eleven Ten further contends that the Commission erroneously denied its exception 119 to the "failure of the Initial Decision to make detailed findings concerning the testimony of public witnesses and the present programming of KRLA as covered in detail in Appendix B [to Eleven Ten's exceptions]". Appendix B consists of twenty pages of proposed findings relating to KRLA's programs and efforts on behalf of religious, charitable and educational institutions. We agree that this exception should not have been denied for want of particularity, but we reaffirm our judgment that it should be denied. In granting Eleven Ten exception 104, we took account of the substance of KRLA's public service efforts prior to the institution of Commission inquiry into the station's operation. Exception 119 seeks primarily findings on meritorious programming efforts by KRLA after the Commission had made it clear to the licensee that renewal of its license was in doubt. In our view, we repeat, such efforts do not constitute a reliable measure of Eleven Ten as a licensee.

15. Remaining are questions relating to the good faith of the licensee's program proposals in its assignment application and Jack Cooke's control over KRLA's operations. These questions need not be resolved since, as set forth above, Eleven Ten has failed to persuade the Commission that a renewal of its license would be in the public interest.

16. It does not appear that oral argument on the petition for reconsideration would serve any useful purpose since the petition and its related pleadings are sufficiently exhaustive. Eleven Ten's request for oral argument is, therefore, denied.

ACCORDINGLY, IT IS ORDERED, This 18th day of July, 1962, That the petitions filed April 18, 1962, and June 14, 1962, by Eleven Ten Broadcasting Corporation for reconsideration and oral argument, ARE DENIED in all respects.

FEDERAL COMMUNICATIONS COMMISSION

/s/ Ben F. Waple
Acting Secretary

Released: July 24, 1962

4/ With its petition for reconsideration, Eleven Ten submitted a document containing a copy of the Initial Decision as modified by its interpretation of the Commission's rulings on its exceptions.

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ORDER

FCC 62-765
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At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 18th day of July, 1962;

The Commission having under consideration the petitions filed April 18, 1962, by Lake Congregational Church of Pasadena, California, and by Immaculate Conception Church of Los Angeles, California, requesting reconsideration of our Decision adopted March 15, 1962, in the above-captioned proceeding; a joint request, for Oral Argument on Petitions for Rehearing, filed June 13, 1962, by Lake Congregational Church and Immaculate Conception Church; and pleadings in response thereto;

IT APPEARING, That petitions allege that the Commission failed to consider the religious broadcasts of Station KRLA; and

IT FURTHER APPEARING, That the Commission, in its above-mentioned Decision, granted Exception No. 104 of Eleven Ten Broadcasting Corporation to the absence in the Initial Decision of findings as to Station KRLA's cooperation with religious organizations; and

IT FURTHER APPEARING, That the Commission's Decision was based upon the Findings of the Initial Decision, as modified by the exceptions which were granted; and

IT FURTHER APPEARING, That the religious programming offered by Station KRLA does not outweigh the considerations underlying the conclusions reached in the Decision (see Federal Communications Commission v. WOKO, Inc., 329 U. S. 223 (1939)); and

IT FURTHER APPEARING, That since the matters raised in the petitions were considered by the Commission, oral argument on the petitions would serve no useful purpose;

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ACCORDINGLY, IT IS ORDERED, That the petitions for reconsideration, filed April 18, 1962, by Lake Congregational Church of Pasadena, California, and by Immaculate Conception Church of Los Angeles, California, ARE DENIED; and

IT IS FURTHER ORDERED, That the joint petition for oral argument, filed June 13, 1962, by Lake Congregational Church and by Immaculate Conception Church, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

/s/ Ben F. Waple
Acting Secretary

Released: July 24, 1962

<p>FCC Form 314 July 1954 Section I</p> <p style="text-align: center;">Form Approved Budget Bureau No. 52-RD27.20</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL COMMUNICATIONS COMMISSION</p> <p style="text-align: center;">APPLICATION FOR CONSENT TO ASSIGNMENT OF RADIO BROADCAST STATION CONSTRUCTION PERMIT OR LICENSE</p>	<p>File No. BAPL-171</p> <p>Name and post office address of assignor (See instruction A for Part I)</p> <p style="text-align: center;">Pacific Coast Broadcasting Company 1401 South Oak Knoll Pasadena, California</p>								
<p style="text-align: center;">GENERAL INSTRUCTIONS</p> <p>A. This form is to be used in all cases when applying for Authority for Assignment of a Radio Broadcast Station Construction Permit or License. It consists of two parts which are to be completed by the Assignor and the Assignee, respectively.</p> <p>B. The assignor's part consists of pages 1, 2, and 3 of Section I.</p> <p>C. The assignee's part consists of pages 4 and 5 of Section I and the following other sections: Section II, Legal Qualifications of Broadcast Applicant Section III, Financial Qualifications of Broadcast Applicant Section IV, Statement of Program Service of Broadcast Applicant</p> <p>Information requested of the assignee in Paragraphs 1 and 3 of Section III of this application is not required of an assignee of a licensed station but must be furnished by an assignee of a permittee only.</p> <p>D. Prepare and file three copies of this form and all exhibits and swear to one copy. File with Federal Communications Commission, Washington 25, D. C.</p> <p>E. Number exhibits serially in the spaces provided in the body of the form. List exhibits furnished by the assignor on page three of this part; list the assignee's exhibits on page five of Part II. Date each exhibit.</p> <p>F. Information called for by this application which is already on file with the Commission need not be refiled in this application provided (1) the information is now on file in another application or FCC form filed by or on behalf of these applicants; (2) the information is identified fully by reference to the file number (if any), the FCC form number, and the filing date of the application or other form containing the information and the page or paragraph referred to, and (3) after making the reference, the applicants state: "No change since date of filing." Any such reference will be considered to incorporate into this application all information, confidential or otherwise, contained in the application or other form referred to. The incorporated application or other form will thereafter, in its entirety, be open to the public.</p> <p>G. BE SURE ALL NECESSARY INFORMATION IS FURNISHED AND ALL PARAGRAPHS ARE FULLY ANSWERED. IF ANY PORTIONS OF THE APPLICATION ARE NOT APPLICABLE, SPECIFICALLY SO STATE. DEFECTIVE OR INCOMPLETE APPLICATIONS MAY BE RETURNED WITHOUT CONSIDERATION.</p>	<p>Send notices and communications to the following named person at the post office address indicated: Samuel Miller, Esq., 501 Washington Bldg., Washington 5, D. C.</p> <p>Name of assignee Eleven Ten Broadcasting Corporation</p> <p>Address of assignee (number, street, city, state) c/o Donald E. Cooke, Donald Cooke, Inc. 600 Madison Ave., New York 17, N. Y.</p> <p>1. Authorization which is proposed to be assigned</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Call letters KXLA</td> <td style="width: 50%;">Location Pasadena, California</td> </tr> <tr> <td>File number BR-1188; BL-7060; KL-6929;</td> <td>Date of grant 5/24/57</td> </tr> <tr> <td>If license, give expiration date 12/1/59</td> <td>If construction permit, give date of required completion 7/12/59</td> </tr> </table> <p>Authorizations of any Remote Pickup, STL, or other stations which are to be assigned</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Call letters</td> <td style="width: 50%;">File numbers</td> </tr> </table> <p>2. Is assignor or any person controlling assignor party to any litigation or proceeding which may in any manner affect (or be affected by) the proposed assignment? If so, describe fully</p> <p style="text-align: center;">Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p style="text-align: center;">OFFICE OF THE ATTORNEY GENERAL</p> <p>3. Give a full statement of assignor's reasons or purposes for requesting this assignment.</p> <p>Assignor's stockholders, who have diverse business interests, have determined that they desire to dissolve corporate licensee and devote their resources to their separate business endeavors.</p> <p>4. Do you propose to request a tax certificate pursuant to Section 112 (a) of the Internal Revenue Code if this proposed assignment is granted? If so, submit as Exhibit No. a brief statement giving the basis for this request.</p> <p style="text-align: center;">Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>5. If this application is approved, will assignor upon the settlement date either file with the Commission or furnish to assignee (show which), for the period from the first of the calendar year to the settlement date, the broadcast operating and statistical data relating to the station or stations involved which are called for in Schedules 1 and 2 of the Annual Financial Report (FCC Form No. 324)?</p> <p style="text-align: center;">Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>	Call letters KXLA	Location Pasadena, California	File number BR-1188; BL-7060; KL-6929;	Date of grant 5/24/57	If license, give expiration date 12/1/59	If construction permit, give date of required completion 7/12/59	Call letters	File numbers
Call letters KXLA	Location Pasadena, California								
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If license, give expiration date 12/1/59	If construction permit, give date of required completion 7/12/59								
Call letters	File numbers								
<p style="text-align: center;">INSTRUCTIONS FOR PART I (Assignor)</p> <p>A. The name of the assignor must be stated exactly as it appears in the authorization to be assigned.</p> <p>B. This part of this application must be executed by assignor if an individual; by one of the partners of the assignor if a partnership; by an officer of assignor if a corporation or association; or by attorney of assignor only under conditions shown in Section 1.502, Rules Relating to Practice and Procedure, in which event satisfactory evidence of disability of assignor or his absence from the Continental United States and authority of attorney to act must be submitted with application.</p>									

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FCC Form 314	PART I (Continued)	Section 1, Page 2
<p>5. Is the information shown in assignor's Annual Ownership Report now on file with the Commission true and correct as of this date? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If the answer is "No", attach as Exhibit No. _____ an Ownership Report supplying full information to bring such data up-to-date.</p>	<p>9. Attach as Exhibit No. <u>B</u> a balance sheet showing assignor's present financial condition.</p>	
<p>7. Does the assignor, or any partner, officer, director, member of the assignor's governing board, or any stockholder owning 10% or more of the assignor's stock, have any interest in or connection with the following (if so state what interest or connection):</p>	<p>10. Describe fully and give present values of any properties equipment, or other assets, exempted from, or liabilities not involved in, the proposed assignment together with resulting effect on net worth shown in balance sheet of assignor.</p> <p style="text-align: center; font-size: 1.2em;">See Exhibit C.</p>	
<p>a. Any standard FM, or television broadcast station? No.</p>	<p>11. a. Attach as Exhibit No. <u>A</u> copies of the contract or agreement to transfer the property and facilities of the station including also but not limited to trusts, leases, debentures, and any other instruments which affect or concern the assignment (See Sec. 1.342 of the Commission's Rules). If there is only an oral agreement, reduce the terms to writing and attach.</p>	
<p>b. Any application pending before the Commission? No.</p>		
<p>c. Dismissed and/or denied applications? No.</p>	<p>b. Is this instrument joined in by assignee? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If the answer is "No", explain why the instrument is not jointly executed by assignor and assignee.</p>	
<p>8. Attach as Exhibit No. <u>D</u> a schedule showing the original cost, the original date of purchase, the original cost less depreciation, and the estimated replacement cost for each item listed in Schedule 3 of the Annual Financial Report. (Original Cost means the actual cost to the first person dedicating the property to broadcast service. Original Purchase Date means the date on which the property was first dedicated to broadcast service.) If the information is not available, show why and furnish estimates. If the assignment arises out of death or legal disability of assignor, or is made without valuable consideration for the properties and equipment assigned, the assignor need not supply the information called for in this paragraph. However, the Commission reserves the right to call for information as to the station's technical and non-technical equipment and property.</p>	<p>c. Show here the consideration (monetary, services, or otherwise) to be paid for the properties, etc., to be transferred and describe terms of payment.</p> <p style="text-align: center; font-size: 1.2em;">\$900,000.00 cash, plus or minus adjustments. See Exhibit A, Section IV(A) and V(B). See, also, letter of agreement dated 11/17/58, attached to Exhibit A.</p>	
<p>The assignor represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.</p> <p>All the statements made in this part of this application and attached exhibits called for by this part are considered material representations, and all the exhibits are a material part hereof and are incorporated herein as if set out in full in this application.</p> <p>The assignor, or the undersigned on the assignor's behalf, states that he has endeavored to supply full and correct information as to all matters which are relevant to this application and that he has done so as to all matters within his own knowledge.</p>		
<p>Dated this <u>25</u> day of <u>November</u>, 19<u>58</u></p>		
<p style="text-align: center;">PACIFIC COAST BROADCASTING COMPANY</p> <p style="text-align: center;">(Name of assignor)</p> <p>By <u>[Signature]</u></p> <p style="text-align: center;">Title</p> <p><u>[Signature]</u></p> <p style="text-align: center;">Notary Public</p>		
<p>Subscribed and sworn to before me this <u>25</u> day of <u>November</u>, 19<u>58</u>.</p>		
<p>(Notary public's seal must be affixed where the law of jurisdiction requires, otherwise state that law does not require seal.)</p> <p style="text-align: center;">My commission expires _____</p>		

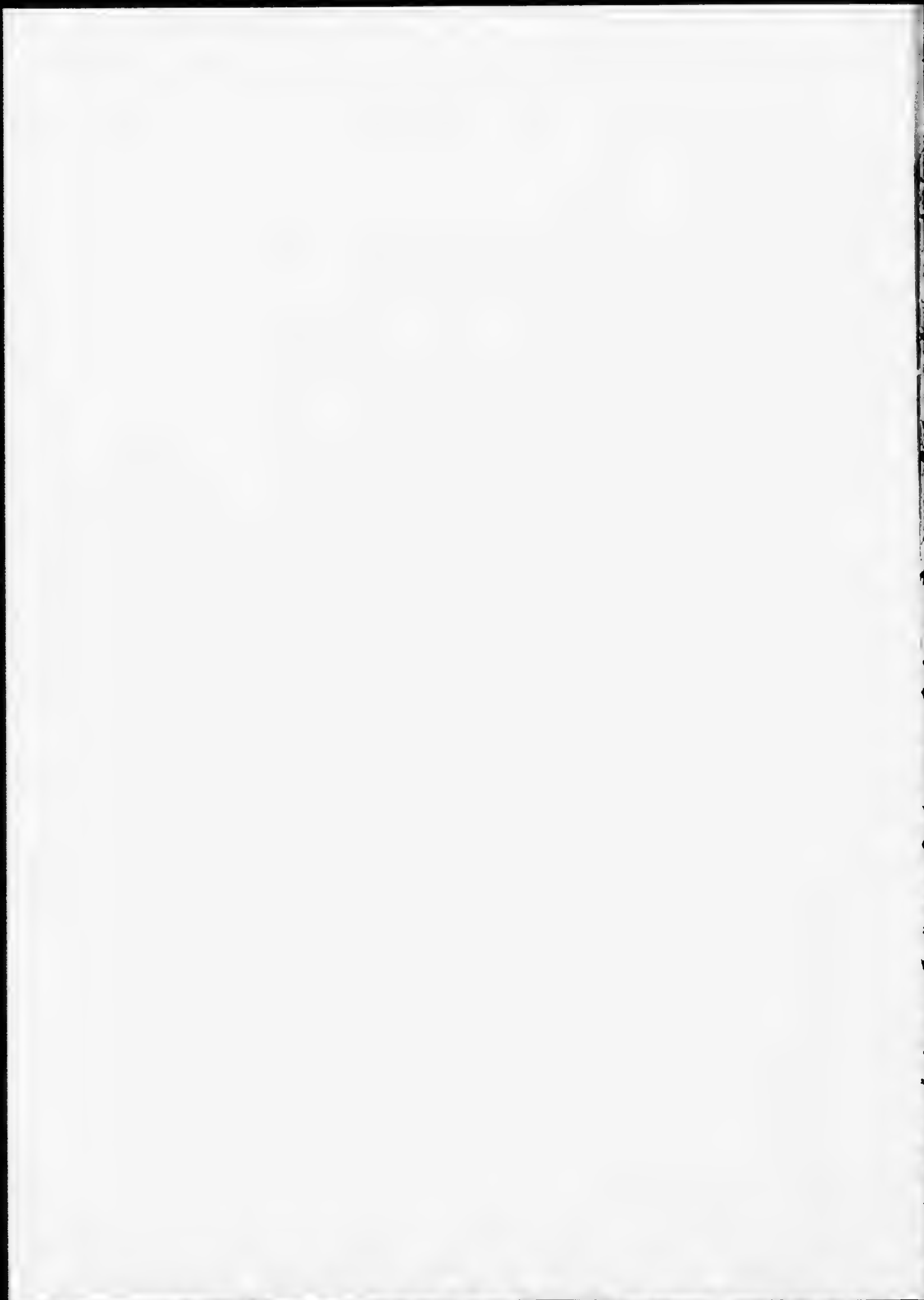
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Broadcast Application		FEDERAL COMMUNICATIONS COMMISSION		Section IV
STATEMENT OF PROGRAM SERVICE OF BROADCAST APPLICANT		Name of applicant Eleven Ten Broadcasting Corporation		
<p align="center">NOTICE TO ALL APPLICANTS</p> <p>The replies to the following questions constitute a representation of programming policy upon which the Commission will rely in considering the application. It is not expected that licensee will or can adhere inflexibly in day-to-day operation to the representation here made. However, since such representation will constitute, in part, the basis upon which the Commission acts on the application, time and care should be devoted to the preparation of the replies so that they will reflect accurately applicant's responsible judgement of his proposed programming policy.</p>				
<p align="center">INSTRUCTIONS</p> <p>1. Paragraphs 1 to 4 are divided into a left-hand column which pertains to past operation and a right-hand column which pertains to proposed operation. Applicants for new stations or assignees or transferees of existing stations are to fill in only the right-hand column while applicants for authorizations for renewal of existing station licenses are to fill in both columns.</p> <p>2. Program data on past performance are to be based on the composite week for the year preceding the date of application except in the case of renewal applications where the year preceding the expiration date of the existing license is to be used. The days comprising the composite week of each year will be designated by public notice on or about November 15th of that year.</p> <p>3. Program classifications incident to the replies to Paragraphs 2, 3, and 4 below, are to be in accordance with the definitions on Page 4 of this Section.</p> <p>4. Assignees or transferees filing FCC Form 314 or 315 need not complete paragraphs 5 or 8.</p>				
PAST OPERATION		PROPOSED OPERATION (for a typical week)		
<p>1. (a) State actual minimum weekly schedule of operation under the present authorization, giving opening and closing time and total hours for weekdays and Sunday.</p>		<p>(b) State minimum weekly schedule of operation proposed by licensee, permittee, assignee or transferee, giving opening and closing time and total hours for weekdays and Sunday.</p> <p align="center">24 hours per day; 168 hours per week</p>		
<p>2. (a) State for the composite week the percentage of time which was devoted to each of the following types of programs (totals to equal 100%).</p>		<p>(b) State the percentage of time to be devoted to each of the following types of programs for a proposed typical week of operation under the authorization requested (totals to equal 100%). Attach program schedule for this proposed typical week and indicate thereon the class of each program in accordance with paragraph 4(b). See Exhibit 11</p>		
<p>(1) Entertainment (include here all programs which are intended primarily as entertainment, such as music, drama, variety, comedy, quiz, breakfast, children's, etc.)</p>		<p>(1) Entertainment (include here all programs which are intended primarily as entertainment, such as music, drama, variety, comedy, quiz, breakfast, children's, etc.)</p> <p align="right">82.7 %</p>		
<p>(2) Religious (include here all sermons, religious news, music, and drama, etc.)</p>		<p>(2) Religious (include here all sermons, religious news, music, and drama, etc.)</p> <p align="right">2.1 %</p>		
<p>(3) Agricultural (include here all programs containing farm or market reports or other information specifically addressed to the agricultural population)</p>		<p>(3) Agricultural (include here all programs containing farm or market reports or other information specifically addressed to the agricultural population)</p> <p align="right">1.0 %</p>		
<p>(4) Educational (include here programs prepared by or in behalf of educational organizations, exclusive of discussion programs which should be classified under (6) below)</p>		<p>(4) Educational (include here programs prepared by or in behalf of educational organizations, exclusive of discussion programs which should be classified under (6) below)</p> <p align="right">1.9 %</p>		
<p>(5) News (include here news reports and commentaries)</p>		<p>(5) News (include here news reports and commentaries)</p> <p align="right">10.0 %</p>		
<p>(6) Discussion (include here forum, panel and round-table programs)</p>		<p>(6) Discussion (include here forum, panel and round-table programs)</p> <p align="right">.3 %</p>		
<p>(7) Talks (include here all conversation programs which do not fall under Points (2), (3), (4), (5), or (6) above, including sports)</p>		<p>(7) Talks (include here all conversation programs which do not fall under Points (2), (3), (4), (5), or (6) above, including sports)</p> <p align="right">2.0 %</p>		
<p>(8) _____ %</p>		<p>(8) _____ %</p>		
<p>(9) _____ %</p>		<p>(9) _____ %</p>		
<p>(10) Miscellaneous _____ %</p> <p align="center">100</p>		<p>(10) Miscellaneous _____ %</p> <p align="center">100</p>		

Broadcast Application	STATEMENT OF PROGRAM SERVICE	Section IV, Page 2																																																																																																																																																														
<p>3. (A) Dividing the broadcast week into 15 minute periods, specify below the number of 14½ minute periods within such 15 minute periods during the composite week in which were broadcast (exclusive of non-commercial spot announcements, call letter announcements and promotional announcements for sustaining programs):</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;"></th> <th style="text-align: center; width: 20%;">No. of 14½ minute periods</th> </tr> </thead> <tbody> <tr><td>(1) No spot announcements or commercial continuity</td><td style="text-align: center;">_____</td></tr> <tr><td>(2) One spot announcement</td><td style="text-align: center;">_____</td></tr> <tr><td>(3) Two spot announcements</td><td style="text-align: center;">_____</td></tr> <tr><td>(4) Three spot announcements</td><td style="text-align: center;">_____</td></tr> <tr><td>(5) Four spot announcements</td><td style="text-align: center;">_____</td></tr> <tr><td>(6) Five or more spot announcements</td><td style="text-align: center;">_____</td></tr> <tr> <td style="text-align: center;">Total number of 14½ minute periods</td> <td style="text-align: center;">_____</td> </tr> </tbody> </table> <p>State the number of spot announcements (exclusive of non-commercial spot and call letter announcements, and promotional announcements for sustaining programs) broadcast during the composite week which exceeded one minute in length _____ (See definition of spot announcement)</p>		No. of 14½ minute periods	(1) No spot announcements or commercial continuity	_____	(2) One spot announcement	_____	(3) Two spot announcements	_____	(4) Three spot announcements	_____	(5) Four spot announcements	_____	(6) Five or more spot announcements	_____	Total number of 14½ minute periods	_____	<p>(B) State what the practice of the station will be with respect to the number and length of spot announcements allowed in a given period.</p> <p>The general practice and policy will be to limit spot announcements to one minute each, with not more than 3 minutes of commercial spot announcements in a 14½ minute period. Reasonable departures from this maximum may be permitted in certain types of programs such as Shopping and Marketing Guides and personality shows, provided that the commercial continuity is in good taste and in keeping with the type of program being presented.</p>																																																																																																																																															
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<p>4. In the tables below the percentages for each segment are to be computed on the basis of 100 percent of the operating hours within the particular segment for the seven days comprising the composite week (i.e., if full time operation, 70 hours for the 8 a.m. to 6 p.m. segment, 35 hours for the 6 p.m. to 11 p.m. segment, and the total weekly hours of operation between 11 p.m., and 8 a.m. for the third segment). The percentages in the column headed "Total" are to be computed on the basis of 100 percent of operating hours for the seven days.</p> <p>The exact number of spot announcements should be stated, including those broadcast within participating programs, but excluding call letter announcements (call letters and location) and promotional announcements for sustaining programs.</p> <p>NOTE: The purpose of the following tabulation is to enable the Commission to secure quantitative data as to the proportion of time (to be) devoted to the various classes of programs. The function of each class of program as part of a diversified program structure is discussed in the Commission's Report of March 7, 1946, entitled "Public Service Responsibility of Broadcast Licensees".</p>																																																																																																																																																																
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Broadcast Application		STATEMENT OF PROGRAM SERVICE	Section IV, Page 3																											
<p>5. (a) Attach as Exhibit No. _____ the original or one exact copy of the program log for the seven days comprising the composite week analyzed in the preceding paragraphs. (If original logs are submitted they will be returned.)</p> <p>(b) What year's composite week has been analyzed in the foregoing paragraphs?</p>		<p>8. If this application is for an FM authorization, will the programs of any AM station operating in the same area be duplicated? If the answer is yes,</p> <p>(a) How many hours per day will be devoted to duplicated programs?</p> <p>(b) Call letters and location of the AM station</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>																											
<p>6. Will the proposed station be affiliated with any network? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If the answer is "Yes", give the name of the network.</p>																														
<p>7. Attach as Exhibit No. <u>12</u> a narrative statement on the policy to be pursued with respect to making time available for the discussion of public issues, including illustrations of the types of programs to be broadcast and the methods of selection of subjects and participants.</p>		<p>(c) What kinds of programs (musical, sports, etc.) will be duplicated?</p> <p>9. State the average number of hours per week which will be used in advertising or promoting any business, profession or activity other than broadcasting in which the applicant is engaged or financially interested either directly or indirectly. If this is an application for renewal of license, show this data for the past license period also.</p> <p style="text-align: center;">None</p> <p>10. If the data furnished in response to the questions in this Section IV do not in the applicant's opinion adequately reflect station operation, attach as Exhibit No. _____ a statement setting forth any additional program data that the applicant desires to call to the Commission's attention. (If the applicant feels that the program material classified in Paragraph 2 is susceptible of classifications other than those listed he may supplement Paragraph 2 with an explanatory statement in this Exhibit.)</p>																												
<p>11. If this application is for a television authorization, will programs be broadcast in color? Yes <input type="checkbox"/> No <input type="checkbox"/> If "Yes", will programs be: Network <input type="checkbox"/> Local Live <input type="checkbox"/> Local Show <input type="checkbox"/></p>																														
<p>12. State applicant's general plans for staffing the station, including the number of employees in each department (i.e. program, commercial, technical, etc.), and the names, residence and citizenship of the general manager, station manager, program director and other department heads who have been employed or whom the applicant expects to employ.</p> <p>The assignee plans to retain the present staff of KOLA without changes in the immediate future in the expectation that at least the majority of the present staff will continue on a permanent basis. Loyal K. King, the President of the present licensee, will remain as General Manager and Program Director.</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 35%;">General Manager and Program Director:</td> <td style="width: 35%;">Loyal K. King Pasadena, California</td> <td style="width: 30%;">United States Citizen</td> </tr> <tr> <td>Chief Engineer:</td> <td>Jack M. Reeder Pasadena, California</td> <td>United States Citizen</td> </tr> <tr> <td>Commercial Manager:</td> <td>Armand Lamont Pasadena, California</td> <td>United States Citizen</td> </tr> <tr> <td colspan="3">Additional Employees:</td> </tr> <tr> <td></td> <td>Administrative-----</td> <td>6</td> </tr> <tr> <td></td> <td>Program-----</td> <td>15</td> </tr> <tr> <td></td> <td>Technical-----</td> <td>7</td> </tr> <tr> <td></td> <td>Sales-----</td> <td>4</td> </tr> <tr> <td></td> <td>Total</td> <td>32 (in addition to Messrs. King, Reeder and Lamont)</td> </tr> </table>				General Manager and Program Director:	Loyal K. King Pasadena, California	United States Citizen	Chief Engineer:	Jack M. Reeder Pasadena, California	United States Citizen	Commercial Manager:	Armand Lamont Pasadena, California	United States Citizen	Additional Employees:				Administrative-----	6		Program-----	15		Technical-----	7		Sales-----	4		Total	32 (in addition to Messrs. King, Reeder and Lamont)
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[1887]

[F.C.C. Received December 22, 1958]

EXHIBIT 1

(Prepared November 28, 1958)

Donald R. Cooke came to the United States from Canada in May, 1944, at the age of twenty-six. Within one week he filed his application to become a citizen of the United States of America and received his final certificate on November 13, 1947.

For six months after coming to the United States he was employed at Radio Station WELL, Battle Creek, Michigan in programming and sales work. He then went to Chicago and worked for an advertising agency in the radio department for approximately eight or nine months. Immediately thereafter he became Chicago manager of a radio station representative firm and remained in that capacity until March of 1946 when he started his own station representation business in New York City. Starting with representation of two radio stations, he has developed this enterprise to a point where it now represents fifty-six radio and television stations, and has affiliated offices in Chicago, Los Angeles and San Francisco. In his business activities, Mr. Cooke has acquired a considerable knowledge of broadcast station operation, and is now desirous of expanding his activities into this field.

Mr. Cooke has made and will continue to make frequent visits to California and, while he will maintain his principal office in the City of New York, he will spend at least one-fourth of his time at Pasadena in the active operation of Station KXLA. Mr. Cooke will employ a competent full time station manager and Mr. Cooke anticipates that one-fourth of his own time will enable him to provide through KXLA a program service which will meet the needs of the listeners within its service area.. If additional time at the station appears needed or desirable, he will spend more time there.

[1933]

510

[1933]

[F.C.C. Received December 22, 1958]

EXHIBIT II

(Prepared November 20, 1958)

The applicant proposes to schedule on KXLA, Pasadena, California, a program of popular music, news on the hour, and news headlines on the half-hour, with sportscasts at peak periods of male listening. The program emphasizing music, news and sports will be produced to appeal to the largest possible cross-section of audience in the station's area.

Surveys will be conducted regularly in an attempt to determine the changing likes and dislikes of the listeners of the area. KXLA will keep abreast of the results of these surveys by programming accordingly.

In the field of public service, KXLA proposes to broadcast polished and attractive performances by teachers, educators and proponents of culture. In order to do so, KXLA proposes to train and coach speakers, where necessary, to present talks with an aura of professionalism and showmanship.

Free time on the station, and, again, the help and assistance of the station's staff will enhance the programs broadcast by religious and civic service organizations.

MUSIC:

Recorded and transcribed popular music will constitute the majority of the music broadcast by KXLA. Records and transcriptions will be chosen by the station's library staff to present a well-balanced schedule of the music of yesterday, today and tomorrow.

NEWS:

The News Department's chief functions will be twofold: (1) the rewriting and editing of teletype news; (2) the gathering and processing of local news. By highlighting local facets of the news and selecting and rewriting

items of national news with a desirable local impact, the applicant further plans to fulfill a need of listeners of the area.

RELIGION:

KXLA will not accept sponsored religious programs. Religious programs normally will be confined to the period 6 a.m. to 12 Noon Sundays, with the exception of a daily inspirational message broadcast early in the morning.

A religious service of a different denomination (in rotation) will be broadcast each Sunday, thus giving every religion an opportunity to communicate with the public served by the station.

[1934]

AGRICULTURE:

KXLA serves a farm area, second in importance only to the industrial strength of the region. With this in mind, the station will schedule one hour program each week calculated to satisfy the needs and the entertainment mores of the farm audience. Bulletins highlighting farm market prices, weather conditions of interest to the farmers - such as storm and frost warnings - will be broadcast on every newscast twenty-four times a day.

EDUCATION:

The applicant proposes to offer to educators, scientists and professional men, not only the physical facilities of the station, but the talents of the program personnel of the station to assist these men to present their talks in a manner best calculated to attract listeners. It has been the experience of the applicant that radio stations frequently provide their facilities to speakers, but fail to help these people to a practical understanding and proper use of the broadcast medium.

[1934]

512

KXLA will schedule at 10:45 p.m., nightly, the program, "Town Hall", on which exponents of culture, science, technology, etc. will speak. We believe these programs will be of sufficient general interest to the public to cause stations in other areas to schedule them. KXLA will offer to these other stations tapes of the programs so that they too may broadcast them.

COMMUNITY SERVICE:

KXLA plans to schedule each night at 10:40 p.m., Monday thru Saturday, the program "Town Crier" in which will be broadcast announcements and information highlighting the events of the community: charity, hospital, church and civic organizations. The station will not only offer its facilities to these civic groups, but will develop and broadcast information of their activities which the station believes will be of general interest to the public.

[1935]

EXHIBIT 11

PROPOSED TYPICAL PROGRAM SCHEDULE

Monday thru Saturday

AM

5:59	Inspirational Message	Rel.	RS
6:00	News and Farm Report	N-Agr.	WS
6:05	Farm Report	Agr.	WC
6:10	Musical Clock	Ent.	RC
6:30	News Headlines	News	LS
6:31	Musical Clock	Ent.	RC
7:00	News and Farm Report	N-Agr.	LC
7:05	Musical Clock	Ent.	RC
7:30	News Headlines	News	LS
7:31	Musical Clock	Ent.	RC

AM

8:00	News and Farm Report	N-Agr.	LC
8:10	Sports	Talk	LC
8:15	Musical Clock	Ent.	RC
8:30	News Headlines	News	LS
8:31	Musical Clock	Ent.	RC
9:00	News and Farm Report	N-Agr.	LC
9:05	Musical Clock	Ent.	RC
9:30	News Headlines	News	LS
9:31	Musical Clock	Ent.	RC
10:00	News - especially edited for the Housewife and Farm Report	N-Agr.	LC
10:05	Make Believe Ballroom	Ent.	RC
10:30	News Headlines	News	LS
10:31	Make Believe Ballroom	Ent.	RC

[1936]

11:00	News and Farm Report	N-Agr.	LC
11:05	Make Believe Ballroom	Ent.	RC
11:30	News Headlines	News	LS
11:31	Make Believe Ballroom	Ent.	RC
12:00	News and Farm Report	N-Agr.	LC
<u>PM</u>			
12:05	Make Believe Ballroom	Ent.	RC
12:30	News	News	LC
12:35	Sports	Talk	LC
12:40	Make Believe Ballroom	Ent.	RC
1:00	News and Farm Report	N-Agr.	LC
1:05	Personality Show	Ent.	RC
1:30	News Headlines	News	LS
1:31	Personality Show	Ent.	RC

[1936]

514

PM

2:00	News - edited especially for Women and Farm Report	N-Agr.	LC
2:05	Personality Show	Ent.	RC
2:30	News Headlines	News	LS
2:31	Personality Show	Ent.	RC
3:00	News and Farm Report	N-Agr.	LC
3:05	Personality Show	Ent.	RC
3:30	News Headlines	News	LS
3:31	Personality Show	Ent.	RC
4:00	News - edited especially for Teenagers and Farm Report	N-Agr.	LC
4:05	Personality Show	Ent.	RC
4:30	News Headlines	News	LS
4:31	Personality Show	Ent.	RC
5:00	News and Farm Report	N-Agr.	LC

[1937]

5:05	Personality Show	Ent.	RC
5:30	News Headlines	News	LS
5:31	Personality Show	Ent.	RC
6:00	News and Farm Report	N-Agr.	LC
6:05	Sports	Talk	LC
6:10	Personality Show	Ent.	RC
6:30	News Headlines	News	LS
6:31	Personality Show	Ent.	RC
7:00	News and Farm Report	N-Agr.	LC
7:05	Personality Show	Ent.	RC
7:30	News Headlines	News	LS
7:31	Personality Show	Ent.	RC

PM

8:00	News and Farm Report	N-Agr.	LC
8:05	Personality Show	Ent.	RC
8:30	News Headlines	News	LS
8:31	Personality Show	Ent.	RC
9:00	News and Farm Report	N-Agr.	LC
9:05	Personality Show	Ent.	RC
9:30	News Headlines	News	LS
9:31	Personality Show	Ent.	RC
10:00	News and Farm Report	N-Agr.	LC
10:05	Personality Show	Ent.	RC
10:30	News and Farm Report	N-Agr.	LC
10:35	Sports	Talks	LC
10:40	Town Crier	Talks	LS
10:45	Town Hall	Ed.	LS
11:00	News and Farm Report	N-Agr.	WC

[1938]

11:05	Personality Show	Ent.	RC
11:30	News Headlines	News	WS
11:31	Sports	Talks	LC
11:36	Personality Show	Ent.	RC
12:00	News and Farm Report	N-Agr.	WC

AM

12:05	Personality Show	Ent.	RC
12:30	News Headlines	News	WS
12:31	Personality Show	Ent.	RS
1:00	News and Farm Report	N-Agr.	WS
1:05	Personality Show	Ent.	RS
1:30	News Headlines	News	WS
1:31	Personality Show	Ent.	RS

[1938]

516

AM

2:00	News and Farm Report	N-Agr.	WS
2:05	Personality Show	Ent.	RS
2:30	News Headlines	News	WS
2:31	Personality Show	Ent.	RS
3:00	News and Farm Report	N-Agr.	WS
3:05	Personality Show	Ent.	RS
3:30	News Headlines	News	WS
3:31	Personality Show	Ent.	RS
4:00	News and Farm Report	N-Agr.	WS
4:05	Personality Show	Ent.	RS
4:30	News Headlines	News	WS
4:31	Personality Show	Ent.	RS

[1939]

5:00	News and Farm Report	N-Agr.	WC
5:05	Personality Show	Ent.	RC
5:30	News Headlines	News	WS
5:31	Personality Show	Ent.	RC

[1940]

PROPOSED TYPICAL PROGRAM SCHEDULE

SUNDAY

AM

6:00	News and Farm Report	N-Agr.	WS
6:05	Religions (Rotating among denominations)	Rel.	LS
6:30	News Headlines	News	LS
6:31	Religions	Rel.	LS
7:00	News and Farm Report	N-Agr.	WS
7:05	Religions	Rel.	LS

AM

7:30	News Headlines	News	LS
7:31	Report on Education	Ed.	LS
8:00	News and Farm Report	N-Agr.	WS
8:05	Religious Music (Great hymns)	Rel.	RS
8:30	News Headlines	News	WS
8:31	School Speaks	Ed.	LS
9:00	News and Farm Report	N-Agr.	WS
9:05	Religions	Rel.	LS
9:30	News Headlines	News	WS
9:31	Roundtable	Dis.	LS
10:00	News and Farm Report	N-Agr.	WS
10:05	Religion	Rel.	LS
10:30	News Headlines	News	WS
10:31	Youth Talks	Ed.	LS
11:00	News and Farm Report	N-Agr.	WS
11:05	Church Services (Rotated among denominations)	Rel.	LS
12:00	News and Farm Report	N-Agr.	WS

[1941]

PM

12:05	Sports	Talk	LC
12:10	Personality Show	Ent.	RC
12:30	News Headlines	News	LS
12:31	Personality Show	Ent.	RC
1:00	News and Farm Report	N-Agr.	LC
1:05	Personality Show	Ent.	RC
1:30	News Headlines	News	LS
1:31	Personality Show	Ent.	RC

[1941]

518

PM

2:00	News and Farm Report	N-Agr.	LC
2:05	Personality Show	Ent.	RC
2:30	News Headlines	News	LS
2:31	Personality Show	Ent.	RC
3:00	News and Farm Report	N-Agr.	LC
3:05	Personality Show	Ent.	RC
3:30	News Headlines	News	LS
3:31	Personality Show	Ent.	RC
4:00	News and Farm Report	N-Agr.	LC
4:05	Personality Show	Ent.	RC
4:30	News Headlines	News	LS
4:31	Personality Show	Ent.	RC
5:00	News and Farm Report	N-Agr.	LC
5:05	Personality Show	Ent.	RC
5:30	News Headlines	News	LS
5:31	Personality Show	Ent.	RC
6:00	News and Farm Report	N-Agr.	LC
6:05	Sports	Talk	LC
6:10	Personality Show	Ent.	RC

[1942]

PM

6:30	News Headlines	News	LS
6:31	Personality Show	Ent.	RC
7:00	News Commentary and Farm Report	N-Agr.	LS
7:10	Rolling Home Show	Ent.	RS
7:30	News Headlines	News	LS
7:31	Rolling Home Show	Ent.	RS
8:00	News and Farm Report	N-Agr.	LS
8:05	Rolling Home Show	Ent.	RS

PM

8:30	News Headlines	News	LS
8:31	Rolling Home Show	Ent.	RS
9:00	News and Farm Report	N-Agr.	LS
9:05	Rolling Home Show	Ent.	RS
9:30	News Headlines	News	LS
9:31	Sports	Talk	LC
9:36	Rolling Home Show	Ent.	RS
10:00	News and Farm Report	N-Agr.	LS
10:05	Rolling Home Show	Ent.	RS
10:30	News Headlines	News	WS
10:31	Rolling Home Show	Ent.	RS
11:00	News and Farm Report	N-Agr.	WS
11:05	Rolling Home Show	Ent.	RS
11:30	News Headlines	News	WS
11:31	Sports	Talk	WS
11:36	Rolling Home Show	Ent.	RS
12:00	News and Farm Report	N-Agr.	WC

[1943]

12:05	Rolling Home Show	Ent.	RS
12:30	News Headlines	News	WS
12:31	Rolling Home Show	Ent.	RS
1:00	News and Farm Report	N-Agr.	WS
1:05	Rolling Home Show	Ent.	RS
1:30	News	News	WS
1:31	Rolling Home Show	Ent.	RS
2:00	News and Farm Report	N-Agr.	WS
2:05	Personality Show	Ent.	RC
2:30	News Headlines	News	LS
2:31	Rolling Home Show	Ent.	RS

[1943]

520

AM

3:00	News and Farm Report	N-Agr.	WS
3:05	Personality Show	Ent.	RS
3:30	News Headlines	News	WS
3:31	Personality Show	Ent.	RS
4:00	News and Farm Report	N-Agr.	WS
4:05	Personality Show	Ent.	RS
4:30	News Headlines	News	WS
5:00	News and Farm Report	N-Agr.	WS
5:05	Personality Show	Ent.	RS
5:30	News Headlines	News	WS
5:31	Personality Show	Ent.	RS

[2004]

[F.C.C. Received March 16, 1959]

AMENDED EXHIBIT 10

(Prepared March 13, 1959)

FINANCING

On October 10, 1958, Pacific Coast Broadcasting Company (PACIFIC) and Donald R. Cooke entered into a "Purchase Agreement" which gave the latter an option, to be exercised on or before February 28, 1959, to acquire all of the assets of the former under the terms and conditions set forth therein. On October 19, 1958, Donald R. Cooke assigned all his right, title and interest in the agreement to Eleven Ten Broadcasting Corporation (ELEVEN TEN). The agreement was the subject of a letter of clarification dated November 17, 1958. On November 25, 1958 ELEVEN TEN gave notice to PACIFIC that it elected to exercise the option and notified PACIFIC that it had assigned to Broadcast Equipment Corporation (BROADCAST EQUIPMENT) the right to acquire the physical property, land and the transmitter leasehold. Copies of the four documents

just mentioned are submitted as Exhibit A to the Assignor's section of this application.

The assignment to BROADCAST EQUIPMENT is covered by an agreement of November 25, 1958, copy of which is hereto attached. This agreement, as amended by agreement of March 12, 1959 between ELEVEN TEN, BROADCAST EQUIPMENT and COOKE, copy of which is attached, commits BROADCAST EQUIPMENT to (a) purchase from PACIFIC all of its physical equipment, land and transmitter leasehold for \$553,680.50 cash, plus an amount equal to any costs expended by PACIFIC up to the time of such purchase in connection with the installation of 50 kw technical equipment (the latter not to exceed \$115,000.00); (b) to assume and perform all contracts of PACIFIC for the 50 kw construction; (c) to complete the 50 kw construction; and (d) to enter into a lease with ELEVEN TEN in the form attached to the agreement.

[2005]

The lease agreement, to be entered into on the closing date, requires BROADCAST EQUIPMENT to lease to ELEVEN TEN the physical property, land, and leasehold interest acquired by it under the assignment for a period of Ten (10) years at a basic rental of \$90,000.00 per year. Additionally, BROADCAST EQUIPMENT is required at its own cost to install any and all equipment and facilities necessary to enable KXLA to operate with 50 KW in accordance with the construction permit issued by the Commission. This construction will not serve to change the rental or other provisions of the lease agreement.

The ability of BROADCAST EQUIPMENT to pay \$553,680.50 for the physical properties and for the 50 KW construction is evidenced by its balance sheet hereto attached. Of the \$671,000.00 on deposit to the credit of this corporation, \$150,000.00 has been obtained for its stock and \$1,000.00 was advanced as a loan by Jack Kent Cooke, its sole stockholder

and brother of Donald R. Cooke, and \$520,000.00 by loan from Frybrook, Ltd., a corporation of which Jack Kent Cooke is the sole stockholder.

The total consideration to be paid to PACIFIC is \$900,000.00 (plus or minus certain adjustments which are immaterial here). BROADCAST EQUIPMENT will pay to PACIFIC \$553,680.50 for certain physical assets, as above stated, leaving a balance of \$346,319.50 to be paid by ELEVEN TEN for assets which will include \$246,319.50 in cash derived from sale of securities (Section V (B) of Purchase Agreement, Exhibit A) and net quick assets of \$63,593.58. The \$246,319.50 cash will be applied to reduce the amount to be paid by ELEVEN TEN to \$100,000.00, the amount already deposited by ELEVEN TEN in escrow to be applied against the purchase price.

[2006]

As operating capital, ELEVEN TEN will have net quick assets of \$73,593.58 of which it is estimated \$20,000.00 will be cash. The balance sheet of PACIFIC of July 31, 1958 (Appendix A to Exhibit A) disclosed cash in the amount of \$10,663.42 and ELEVEN TEN has \$10,000.00 additional cash received in payment for its outstanding stock.

Referring to the current balance sheet of ELEVEN TEN (Exhibit 8) the sources of its funds are as follows: Its sole stockholder, Donald R. Cooke paid \$10,000.00 for its stock, this money having been acquired by him in the ordinary course of his business activities and not specifically for the purpose of purchasing the stock. ELEVEN TEN, with the individual guarantee of Donald R. Cooke, has obtained a loan of \$100,000.00 from Empire Trust Company, New York, New York, upon execution of a promissory note dated March 13, 1959, a copy of which is attached, and upon the pledging of all the issued and outstanding Common Stock of ELEVEN TEN and all of Donald R. Cooke's shares in

DONALD COOKE INCORPORATED in accordance to the letters dated March 12, 1959 addressed by Donald Cooke to Empire Trust, copies of which are attached.

It should be noted that the stock of ELEVEN TEN cannot be delivered as collateral to the Empire Trust Company until after receipt of a permit from the California Corporation Commissioner, which permit is required because ELEVEN TEN, a California corporation, is not conducting any business at the present time. The permit will be issued by the California Corporation Commissioner as a matter of course.

[2016]

May 1, 1959

Miss Mary Jane Morris, Secretary
Federal Communications Commission
Washington 25, D. C.

Dear Miss Morris:

This is to advise the Commission that Eleven Ten Broadcasting Corporation has today acquired the licenses and construction permit of Radio Station KXLA, Pasadena, California, pursuant to the consent of the Commission granted March 25, 1959, File No. BAPL-171.

Very truly yours,

ELEVEN TEN BROADCASTING CORP.

By /s/ Donald R. Cooke

[2027]

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[2027]

BROADCAST LICENSE DIV.

FEDERAL COMMUNICATIONS COMMISSION

DAYLETTER

COLLECT

TELEGRAPHIC MESSAGE

Official Business
U. S. Government

AUGUST 28, 1959

ELEVEN-TEN BROADCASTING CORPORATION
RADIO STATION K X L A
1401 SOUTH OAK KNOLL
PASADENA, CALIFORNIA

RELET ATTY 21 AND FORMS 302. PROGRAM TESTS NOT REPEAT
NOT AUTHORIZED PENDING RECEIPT AND ACTION INFORMATION
TO SHOW COMPLIANCE CONDITION 4 OF CONSTRUCTION PERMIT.

MARY JANE MORRIS, SECRETARY
FEDERAL COMMUNICATIONS COMMISSION

cc: Miss Iehl
E/C Los Angeles
Pierson, Ball & Dowd, Atty.

Sent Via:
WESTERN UNION
August 28, 1959
Mail & Files

Incoming Letter retained

Date and Time Prepared
8/28/59 3:40 p.m.

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS
BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C.

October 3, 1960

Prehearing Conference

In the Matter of:

Eleven Ten Broadcasting Corporation

Pasadena, California

)
) DOCKET NO. 13622
) and
) 13623

The above-entitled matter came on for prehearing conference, before James D. Cunningham (The Hearing Examiner) in Room 1230, New Post Office Building, Washington, D. C. at 9:10 o'clock a.m.

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[2]

PROCEEDINGS

PRESIDING EXAMINER: All right, we will go on the record with this prehearing conference, Docket 13622, application of Eleven Ten Broadcasting Corporation for a renewed license for station KLRA. Counsel for the applicant are present and counsel for the Commission's Broadcast Bureau.

The hearing is set for the field, for Los Angeles, California, on October 31.

May I ask, Mr. Rawson, if I may, do you expect to complete your hearing in the field in its entirety?

MR. RAWSON: Yes, sir. As of the present point. At some later date, it may be just a matter of, if it should arise, photostating documents here in Washington, but we don't anticipate that at the present time.

PRESIDING EXAMINER: No extensive testimony, in any event?

MR. RAWSON: No.

PRESIDING EXAMINER: Could you give us an idea of the number of witnesses you will call, and the approximate length of time you will

require, at least for direct.

MR. RAWSON: We don't have any direct case, sir. The burden of proof here is on the licensee. At this point, we don't know if it will be necessary to produce any witnesses.

PRESIDING EXAMINER: You are planning to go forward, I take it?

[3]

MR. RAWSON: No, we are not planning.

MR. DOWD: I might point out in that respect that the field hearing was requested by the Broadcast Bureau.

PRESIDING EXAMINER: Yes, that is why I asked if the Bureau planned to go forward. In these renewal cases, my experience has been that the applicant is always willing for the Bureau to go forward and make a showing, notwithstanding that the applicant, of course, has the burden.

What do you say, Mr. Dowd, do you plan to go forward?

MR. DOWD: I am perfectly willing to let the Broadcast Bureau go forward.

PRESIDING EXAMINER: As you know, Mr. Rawson, I sometimes suggest that in these renewal cases, although the applicant has the burden, so that the applicant may be fully informed as to what to meet in the way of evidence.

MR. RAWSON: Mr. Examiner, I will not disagree that on some occasions we have agreed to assume, for convenience, the burden of going forward with the presentation of whatever evidence we have. But this has to be considered on a case to case basis.

PRESIDING EXAMINER: Oh, yes.

MR. RAWSON: In this particular case, of course, the applicant has been put on complete notice by the Commission as to what it desires. We have specific issues in the case, and there is the possibility that while we anticipate that

[4]

it may be necessary to call witnesses, much depends on the extent to which testimony, satisfactory testimony, is adduced upon direct by Mr. Dowd or the applicant, and what is developed on cross examination of these witnesses.

Now, assuming that we had the complete cross examination, it may even be possible that we will need to call no witnesses.

PRESIDING EXAMINER: I see.

MR. RAWSON: On the other hand, we have to be prepared to call a number of witnesses in the event that it turns out, after cross examination, to be necessary. But at this point, we see no justification and no reason for assuming the so-called statutory burden that is placed upon the applicant in this particular case.

PRESIDING EXAMINER: Of course, you don't have the statutory burden of proof, I understand that.

MR. RAWSON: Nor proceeding.

PRESIDING EXAMINER: I mean proceeding.

MR. DOWD: I have no objection to assuming it, although, as I state, if, as it now appears, the Bureau wishes to wait until after I have presented and met my burden, presented my case and met my burden, before deciding what they will do, I think their motion to move this hearing in to the field is inappropriate. But I think at the present time it would be equally inappropriate for me to suggest that

[5]

it be held in Washington as originally scheduled.

MR. RAWSON: Oh, Mr. Examiner, certainly, we have no objection if Mr. Dowd wants to put his case on here in Washington. It would be just as convenient to have him put his case on in California as it would be here, and then move the case to the field. We anticipate, of course, that it will undoubtedly be necessary to call some witnesses in this proceeding. But, of course, as I say, the extent of the witnesses to be called

will depend entirely upon whatever evidence is offered by Mr. Dowd under the three issues or four issues that are in this case.

Now, if Mr. Dowd wants to proceed here in Washington, D. C. and then move the hearing to the field, which I am sure will have to be done, we have no objection.

PRESIDING EXAMINER: Well, that wouldn't be feasible at all, Mr. Rawson, because the field schedule plans have already been made. What I had in mind was if the Commission agreed to go forward with its proof in the first instance, as has happened in other renewal cases, it might save time in the long run, because the applicant would be fully informed, whereas if the applicant goes forward in the first instance, he would more or less in the darkness, if not entirely in the darkness, as to what you would have and then he would require maybe an extended rebuttal case. I don't know.

MR. RAWSON: Mr. Examiner, I don't know what cases

you are referring to. There have been cases in which we have assumed the burden of going forward--some--but there have been just as many if not more where we have not assumed the burden of going forward.

Now, I think the nature of the issues in this case and the notice to the applicant and so forth are such that nobody is going to be in the darkness. This is an attempt to pre-examine the facts, whether they are favorable or unfavorable as far as the applicant is concerned.

PRESIDING EXAMINER: If you were to go forward, Mr. Dowd, in the first instance, and of course, you will have full opportunity for rebuttal after the Government presents its case, how many witnesses would you call and how much time would you require? Do you have any idea?

MR. DOWD: I would say there would probably be two or three witnesses that would be classified as applicant witnesses, and probably, oh, say, 10 public witnesses.

PRESIDING EXAMINER: And on direct, you would require about what time, would you say?

MR. DOWD: Well, they might not all be presented at the same time, but I would assume that we could get the 10 public witnesses on in direct in a day.

PRESIDING EXAMINER: I see.

MR. DOWD: And the so-called corporate witnesses direct should not take more than a day, I should think.

[7]

PRESIDING EXAMINER: I see. Both?

MR. DOWD: Yes, sir.

Two or three days, I would think, in the direct case, and then the rebuttal would depend on what may or may not develop.

PRESIDING EXAMINER: Of course.

MR. DOWD: I would note here that when the Bureau says that we are fully advised, it should also be there have been extensive representations made by the applicant in this hearing and as a part of its prehearing pleadings that they constitute more or less a state of our direct case. The Broadcast Bureau or the Commission has not felt satisfied with those presentations, and to a large degree, I assume that this will therefore constitute cross examination of the testimony that, to a large degree, is already before the Bureau.

MR. RAWSON: Well, in response to that, that testimony is not before the Bureau at this time. We have some statements that were submitted to the Commission by the applicant in response to inquiries, but we do not have those statements as yet in evidence in this proceeding.

MR. DOWD: When I said before the Bureau, I meant that you were fully aware at least to the degree that I would assume that if contrary testimony were offered by those witnesses, the statements would be utilized by the Bureau in some manner.

[8]

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[8]

MR. RAWSON: That is why I think this points up the necessity, really, for the applicant of assuming the burden of going forward in the normal procedure. If we could have some idea who the applicant witnesses might be, if Mr. Dowd has them, if he is willing to give them, it might help us. I don't care about the public witnesses.

[11]

PRESIDING EXAMINER: I see. I go back to my original suggestion about the Government beginning. I do think it would save time. However, if there is objection to this I

[12]

wouldn't insist on it. It seemed to me, however, that if the Government came forward with its full presentation over the recess and the applicant came forward, we might wind up more expeditiously than if the applicant came forward, than the Government, then rebuttal.

MR. RAWSON: Well, Mr. Examiner, knowing that we are aware of what the case involves, I would have to disagree that that would be the more expeditious way to handle this. This is not a prosecution in the sense that we have a case. We are only in this matter in order to find out precisely what the facts are. We believe that the applicant is in the better position to give the Commission the facts on the issues that have been specified for the renewal proceeding.

PRESIDING EXAMINER: I see. Well, I would say that normally that would be the better practice, although I don't know anything about the facts.

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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

(Prehearing Conference)

Los Angeles, California

October 28, 1960

In the Matter of:

Eleven Ten Broadcasting Corporation,
Pasadena, California

)
)
)
)

DOCKET NO. 13622
and
13623

The above-entitled matter came on for further prehearing conference before James D. Cunningham (The Presiding Examiner) in Room 1609, Federal Building, Los Angeles, California, at 10:00 o'clock a.m.

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[38]

MR. DOWD: In discussing this thing, Mr. Examiner, I had an off-the-record conference with Mr. Rawson with reference again to expediting this proceeding and to try and develop a record in an orderly fashion, and the question I asked was whether it was his desire to go into other activities in the station in connection with the contest called "The Golden Key" contest, which was carried during the same period of time that the Perry Allen contest was on the air. He indicated that it was.

I have some reservation as to how extensive it is involved,

[39]

because it is not a specific issue. It has not been made a specific issue by the Commission. But again I am not wrapping myself in the flag, incidentally, but again in the interest of the conclusion of this, so there will be no more reservations that we have tried to withhold information, I will go ahead with this contest, because, as I say, on a time basis it fits into the progression of the station. And this, again, may have some

effect upon the determination of the Commission as to witnesses.

But in doing so, I do note, as I say, the reservation that I have some question as to its materiality.

PRESIDING EXAMINER: Yes, I see.

MR. DOWD: But I will waive it in the interest, because I think it will be faster to go ahead with it than to argue about it.

PRESIDING EXAMINER: I think it would.

MR. DOWD: I also feel that it may enable us to get a complete record in the shortest possible time.

MR. RAWSON: I think that is very salutary because, as I say, we think it is quite relevant, and the question of relevancy or materiality can be argued in our findings or before the Commission.

* * * *

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October 31, 1960

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JULIUS J. TRUXAW

a witness called by and on behalf of KLRA, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DOWD:

Q. Would you please state your name and address for the record, sir? A. Julius J. Truxaw, 1433 West Ninth Street, Los Angeles.

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Q. And if you will excuse the form of the question, what is your occupation, sir? A. Pastor of Immaculate Conception Church.

Q. And what is your position in the hierarchy of the Church? A. Well, I happen to be a Monseigneur, Right Reverend Julius J. Truxaw.

MR. RAWSON: Monseigneur, is that T-r-u-x-e-a-u-x?

THE WITNESS: No, T-r-u-x-a-w.

MR. RAWSON: Excuse me.

BY MR. DOWD:

Q. How long have you been associated with your present church, sir? A. Of this particular church, I'm pastor there 25 years. And I was ordained 42 years ago.

Q. And what is the approximate size of your parish? A. Well, it is a downtown parish now. I would say it is a sort of a commercial district; they are building commercial buildings throughout and tearing down housings, especially the old, old mansions that used to be really deluxe in the olden days; but now they have become rooming houses right down close by here. And so the parish is not as prominent as it used to be.

However, we get an attendance there, I daresay, of--on a Sunday of about 3,500 people.

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Q. Father, has your church ever been connected in any way with the broadcast of a mass or of a service? A. Yes, sir.

Q. And over what period of time? A. Oh, about fifteen years ago KLAC took us over, and we were on their station for all of those years until last January. I think it was January when they changed stations.

Q. What were the circumstances of that change? A. Well, of course you have to consider the purpose of the broadcasts. Our main purpose of the broadcast is to give the High Mass service over the air to the shut-ins, sanitariums, hospitals, the people living at home who are invalids and unable to go. That is our main purpose.

However, I know that possibly as many more as we contact in that line, we have other persons listening in--persons who possibly are at such a distance that they cannot attend mass on Sunday. And I know they

tune it in, because I get letters all the way from Lower California stating that they assemble on a Sunday morning because there is no church within 40 miles of their neighborhood, three or four families get together and turn it on.

And then we have, of course, letters coming in continually from near and far.

Q. Now, what time was the broadcast carried on KLAC? A. We had it from 8:00 to 9:00, which was very

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satisfactory. It was fairly good at that time.

Q. And was there any change proposed by KLAC? A. They notified me last January that they would have to put us on from 7:00 to 8:00 which, of course, is out of the question for shut-ins. From 7:00 to 8:00 hospitals, sanitariums are at their very busiest hour. And so I told them that I could not possibly set the High Mass at 7:00 o'clock; if they could give me a later mass, later than 9:00, 10:00, even 12:00--but they stuck to the 7:00 hour, so I told them that we would go off the air.

Q. Were there any other conditions proposed at the time that they proposed to move you to the earlier hour? A. Yes. They were to charge me for the technician. I don't recall what that amounted to; but we had not been paying the technician in the church choir loft there where we have our booths. We had not been paying the technician until that time. And so now they wanted to switch me from 7:00 to 8:00 and charge for the technician also.

Q. As a result of these moves, when was your last broadcast on KLAC, if you recall? A. Oh, I daresay it was right about Christmas of this last Christmas, possibly, somewhere in there.

Q. Sometime around the first of the year of 1960? A. Yes, because we went idle, I think, for two Sundays. The last broadcast of-- the last broadcast I made, I bade

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farewell to my audience, and then I got thousands of letters regretting the fact that they would be deprived of this. And for two Sundays we went without a broadcast.

Q. When were you approached-- A. Then out of a clear sky came an approach from KRLA if I could favor them with that program. And I was delighted, of course.

Q. And what did they offer you with respect to time? A. Instead of 7:00 to 8:00, they offered me 9:00 to 10:00, which is ideal for the station--for my people, I mean, because they have had their breakfast in their sanitariums and hospitals by that time. And that is the most appropriate hour for them, that or even later. But that is ideal, really.

Q. Or any conditions attached with respect to paying for technicians or other services? A. None whatsoever. They told me that would take care of everything free.

Q. And pursuant to that offer, did you accept and begin broadcasts on KRLA? A. Yes. We started, I think, a Sunday or two right after that. I think it was in January; January, the first part of January.

Q. Do you recall who made the first approach from KRLA? A. If I heard his name, I would know it. If you could give me--of his name.

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Q. Was Mr. Cooke one of the persons? A. He was one of them, yes.

Q. Mr. Donald Cooke? A. I think--I don't know if it was Donald, but anyway, it was Mr. Cooke; I recall--

Q. Do you see him present in this room? A. I think so, yes.

Q. Could you identify him, please? A. Right there with the loud-colored necktie.

MR. DOWD: I would ask that the record indicate that he pointed and identified Mr. Donald Cooke.

BY MR. DOWD:

Q. Have the services been carried regularly since that time by KRLA? A. Yes, every Sunday.

Q. Do you feel that insofar as your faith is concerned, that these broadcasts are of an important nature? A. Oh, they are doing a tremendous amount of good, consolation, too, and people are--you see, we have about a ten-minute sermon. And many people tune in for the sermon. Some probably cut it off, I guess.

Q. Do you deliver the sermon? A. We take turns, five of us.

Q. What is the nature; just what do you do insofar as the production of this program is concerned? What efforts

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do you take to produce the program? A. Well, I hire a splendid set of trained voices. I have a double quartet of men; and that is my expense. It is quite an expense. They cost me in the neighborhood of about \$6,500 a year. That is the organist and the narrator and a choir director and eight voices.

Q. You have a narrator on the program? A. Yes.

Q. And he is selected by you? A. Yes.

Q. Do you know, sir, whether any other radio station in California broadcasts a High Mass regularly? A. No. To my knowledge, not regularly every Sunday through the year, no. I don't know of a church anywhere in the country that does that.

Q. In view of that, is widespread coverage by a radio station valuable to you in your faith? A. Oh, yes. Now that we are on a stronger station, you see, we go further.

Q. You indicated that you received correspondence. A. I do, yes.

Q. Are these letters restricted to members of your parish?

A. No, not necessarily. I get, once in a while, refutations to what I have said over the air by those who don't

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believe in the same doctrine, probably.

Q. I said parish, not faith. Were the letters restricted to members of your parish or do they come from-- A. Oh, no. We get letters from all over. As I say, Lower California. A lot of them from San Diego, a large number from San Bernardino County, Riverside County and up north as far as, I think, Santa Maria. At least, we go up along the Coast a long ways. We don't hear regularly, of course, but we hear from these distances and from out in the sea--troops going out, or some Government boat going out, and I would get a letter from Honolulu that they heard my mass when they were half way across or something like that.

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MR. DOWD: I have no further questions at this time.

PRESIDING EXAMINER: Cross-examination?

CROSS-EXAMINATION

BY MR. RAWSON:

Q. Had anyone from Station KRLA ever contacted you prior to the time that Donald Cooke attempted to arrange to broadcast your mass?

A. No.

Q. Did you ever hear of Station KRLA before they contacted you?

A. On switching around; I wasn't familiar with any station too closely except baseball and football stations.

Q. On the same network-- A. And news and so on. I was not approached by them at all.

Q. Do you believe that broadcasts of this type of a program is a worthwhile thing, Monseigneur? A. It certainly is; it brings in converts.

Q. Would you feel that it would be a disservice now to discontinue this broadcast? A. By all means.

Q. Have you ever talked to any of the other stations in the area looking towards having them broadcasting mass, also? A. No, I have not.

Q. You have never actually gone to look for anything? It is simply the station coming to you? A. No, I spoke to no one. I haven't been contacted by any others except when KRLA came to the rescue.

Q. What did Mr. Donald Cooke say to you, Monseigneur, if you recall? A. He asked me if I would be interested in having the program on the air. I told him I certainly would be interested. I was hoping and praying at that time that I would get some station, but I hadn't approached anyone. We just thought we would discontinue probably for a few months. For how long, we didn't know. But we thought eventually we would make contact, so we waited a couple of weeks and floods of letters started coming in. At the same time, KRLA came on the scene.

Q. And you had been previously broadcasting on station KMPC?
A. Yes.

Q. For how many years? A. Oh, 15 years, I guess.

Q. Have you personally or anyone under you ever contacted any standard broadcast station in the Los Angeles area looking towards the broadcast of this mass? A. No.

Q. Do you have a policy against this thing?

A. No. I just was put on the air. I was asked by Archbishop Cantwell of happy memory if I would put it on. That was on towards the beginning of the Second World War, I guess. So we went to bat and put in our booths and started in.

Q. And the first contact you had from Station KRLA came after your broadcast approximately Christmas 1959? A. Yes.

MR. RAWSON: That is all I have.

MR. DOWD: I have a few more questions.

REDIRECT EXAMINATION

BY MR. DOWD:

Q. Monseigneur, so long as the service was on KMPC, did you

need the service on any other station? A. Did I need it?

Q. Yes. A. Well, I hadn't given it a thought. I thought it was probably just a matter of local spots that all stations were hitting, until after we got your station, then I discovered that we go further, which is so much better, 50,000 watts.

MR. DOWD: Thank you, sir.

PRESIDING EXAMINER: That will be all, sir.

(Witness excused.)

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RAYMOND C. ORTLUND,

a witness appearing for and on behalf of the applicant, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DOWD:

Q. Would you state your name and address for the record, please.

A. Raymond C. Ortlund, 1190 South El Molino, Pasadena, California.

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Q. What is your occupation, sir? A. I am a minister of the Gospel in the Congregational Church.

Q. Are you connected with a church in this area? A. Yes, I am pastor of the Lake Congregational Church in Pasadena.

Q. When did you assume your duties with that institution? A. September 7, 1959.

Q. Have you since assuming those duties had occasion to come in contact with representatives of Station KRLA? A. Yes.

Q. Could you explain the facts and circumstances of your meeting with those individuals? A. I think it was some time in the latter part of October of 1959 that KRLA made an informal contact with us concerning

broadcasting our morning service.

Later on, in probably the first part of December or maybe a little before, they contacted our official board and worked out an agreement of beginning broadcasting the 31st of January 1960.

Since then we have been on the air from 11:00 o'clock to 12:00 each Sunday. The station has been very cooperative and we have been very happy, of course, to have this opportunity.

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Q. What steps had to be taken by the church as far as preparing itself for the actual broadcast of the service that began on January 31, 1960? A. Well, as you know, or as you might suspect, a regular morning worship service is not good broadcast material and it has to be stepped up and there is a lot of work that has to be done. We have a little radio room that is off of our sanctuary. We have in the last year equipped that with some very fine equipment from CBS. We have had to train personnel and we now have trained personnel. We have been running the equipment during the service and we have, of course, had to sharpen up our service to make it satisfactory for broadcast, which I believe is a help to us as a church, making it a better service, I hope.

And also, we have had to improve in many other ways, microphones, equipment, things like that.

Q. When you were first approached by representatives of KRLA, what was the nature of that first approach? You said that you were approached, you believed, sometime in October of 1959. Do you recall who it was? A. That approach was made through one of the men of the church. It was merely exploratory, I believe.

Q. To determine whether or not you might be interested? A. Yes. To ask if we might be interested. Even then

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I understand that there were some who felt that we weren't interested. But, of course, the majority were very pleased to have the opportunity.

Q. In other words, this action was something that required the approval of your board of directors, so to speak? A. Yes.

Q. You have a board of trustees that pass on such matters?
A. Yes.

Q. When did they take official action? A. I think they took it at their January meeting, which was the second Thursday in January.

Q. How many members do you have in your congregation?
A. 1900 members.

Q. As of January of 1960, how many members did you have?
A. 1800.

Q. Have you had any indication from members, I mean from individuals who are not members of your congregation as to reception of this program? A. Yes. That has been very satisfying. We have had correspondence from Santa Barbara, from Whittier, and from Apple Valley. Don't ask me how they got it there, but they did. We have it from all over, really. It has been very,

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very satisfying. We have asked for no mail. I personally have made no plea for any mail.

Q. Do you in any way make any solicitation of funds from your listeners to keep your broadcast on the air? A. No. But if that is an invitation--no, sir, we do not. We are very happy at this arrangement. We would not want to do that.

Q. Are any charges made by the station? A. Line charges, \$15 a month, I believe. I think it is for telephone line.

Q. You mentioned that you thought that in order to make this service suitable for broadcast that it required certain modifications, sharpening up and tightening up of your service. Has it had any impact

upon the in-church service as such? A. Well, I think it can best be seen by the fact that our church was packed with 1,210 yesterday, in our church yesterday, and our church holds 1,200. So it has been, I think, a very excellent influence on our church.

Q. Has it had any impact or have you noticed any relationship insofar as the younger people are concerned in your church? A. Well, they love radio, of course. This is a thrill to them, yes. Yes, I would say it is interesting and it makes them feel that our church is going ahead, yes.

Q. Do you know whether there is any other regular church service of the Protestant faith, regular denomination, broadcast by any other radio station in this community? A. I don't know. I know there is one on FM from the Baptist Church. But I don't think there is another station carrying an 11:00 o'clock worship, unless it would be the Hollywood--no, the Hollywood Presbyterian Church broadcast is in the evening.

I know of no other in the area. In general--

MR. RAWSON: Excuse me. Is it the purpose of that question to establish that there is no other stations that broadcast these religious programs?

MR. DOWD: I asked within his knowledge.

THE WITNESS: At 11:00 to 12:00, as far as I know, none. Now, I believe that the Pasadena Presbyterian Church has its own station with which it covers the local area, and they do broadcast their morning service.

BY MR. DOWD:

Q. That is the one you referred to on FM? A. No. That is an AM station. It is a privately-owned non-commercial station.

Q. What church is that? A. The Pasadena Presbyterian Church.

MR. DOWD: I have no further questions.

PRESIDING EXAMINER: Sir, have you satisfied yourself

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that your large church attendance is attributable to this program?

THE WITNESS: Oh, no, I don't think it is. I just say that it has been probably a help in the church spirit. I don't think that I would attribute that to the radio.

PRESIDING EXAMINER: Cross-examine.

CROSS-EXAMINATION

BY MR. RAWSON:

Q. Is it Dr. Ortlund? A. No, sir. Mr. Ortlund.

Q. Has the Pasadena Presbyterian Church offered your church time for religious services at any time? A. No.

Q. Don't they broadcast services of other denominations in the area? A. I don't know of it if they do. They may.

Q. They could and you would not know about it? A. Oh, yes, certainly.

Q. But to your knowledge, they have never offered your church any time? A. Not to my knowledge.

Q. When were you first approached by someone from Station KRLA in connection with the broadcast of this program? A. This approach was made through one of the members of our church whose name is John Robinson, who was spoken

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to by the program manager, program manager, I guess, at KRLA. I think it was in the latter part of October.

Q. When was the first time someone from Station KRLA approached you? A. Me personally, you mean?

Q. You personally, yes. A. Well, I think that they talked to me personally--I wasn't at the board meeting which a couple of their

representatives attended. They approached me personally some time in the first part of January, I believe, the first week or two.

Q. Is that the first time you were approached by representatives of Station KRLA? A. Yes, to sit down and talk with them. And I showed them around, the equipment, and showed what we had.

Q. What was the time period and the date that they wanted to commence your broadcast, if you can recall? A. January 31st.

Q. Did you have any difficulty in having the board approve the broadcast time? A. No.

Q. How long did it take before the board approved it? A. Well, the thing was in the air, you see, for some time, as I mentioned before.

Q. When was it submitted to the board for approval,

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if you know? A. I think it was submitted for board approval the second week in January.

Q. When was it approved? A. At that meeting.

Q. At that same meeting? A. Yes. Contact had been made, though, prior to the first of the year.

Q. If time had been offered by the Pasadena Presbyterian Church, would you have known about it? A. Well, while I was pastor, yes. Of course, I have only been there for a little over a year now, you see.

Q. Do you know whether or not the station used the facilities of the Pasadena Presbyterian Church prior to the time that you arrived?

A. Do I know if--repeat that.

Q. Excuse me. If your church used the facilities of the Pasadena Presbyterian Church radio station prior to your arrival at Pasadena.

A. I have heard no history of this at all.

MR. RAWSON: I have no further questions.

REDIRECT EXAMINATION

BY MR. DOWD:

Q. Mr. Ortlund, what did Mr. Robinson say to you? I understand

he is a member of your congregation.

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A. Yes. He is on our public relations committee.

Q. What was the nature of the conversation that you had with Mr. Robinson at this earlier date? A. Well, it was that he saw a possibility of this broadcast, and he was quite excited about it.

Q. Had he been contacted or had he talked to any representative of KRLA or did he represent to you that he had talked to a representative of KRLA? A. Yes, he had talked to a representative of KRLA.

Q. In other words, as you understood his conversation, he was reporting to you a discussion that he had had with a representative of the station? A. Yes.

Q. With reference to the possibility of a church service? A. Yes.

Q. And this is the conversation you referred to that had taken place, as you best recollect it, in October of 1959? A. Yes.

PRESIDING EXAMINER: Did the station representatives contact him or did he contact the station representatives, if you know, sir?

THE WITNESS: I believe it was an informal contact by the radio station.

MR. DOWD: I have no further questions.

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RECROSS-EXAMINATION

BY MR. RAWSON:

Q. Mr. Ortlund, is it your testimony that had you been offered a time in October that you would not have been able to commence broadcasting this program in October? A. Well, the service goes on. We could broadcast it really any time, you see.

Q. So that had you been offered a time in October, you would not have had any difficulty in commencing your broadcast some time in October? A. Well, we would have had to obtain microphones and

things like that. I don't think it would have been any problem.

Q. When did you first acquire your microphones for the studio?

A. The night before. Well, we tried to find them at a reasonable price, and I think we even borrowed them for a while. We had a number of microphones on our own, though. I don't think they were adequate.

MR. DOWD: I believe, Mr. Examiner--I don't want to keep this seesawing back and forth. But there is an implication here I would like to clear up.

REDIRECT EXAMINATION

BY MR. DOWD:

Q. Do you feel that any period of time or discussion

between the first approach by Mr. Robinson representing the contact with the station, that immediately upon his approach that you could have started broadcasting the next Sunday? Is that what you meant? A. No. You have to go through official channels on these things.

Q. Do you feel that the time lag between the first contact by Mr. Robinson and the ultimate approval of the board in January was an inordinate lapse of time? A. No. We were just kind of feeling our way along on it. We weren't in a big rush. We didn't think that the station was, either. We didn't know.

MR. DOWD: I have no further questions.

PRESIDING EXAMINER: I think that will be all, sir. * * * *

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November 2, 1960

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JACK KENT COOKE

a witness called by and on behalf of KRLA, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DOWD:

* * * * *

Q. * * * A. I came down on August 19th, I came down just for a matter of a week or ten days or something like that. Donald had prepared an elaborate promotion here, included in which was an opening cocktail party at the Beverly Hills Hotel, and I promised to attend it with them, to share the fun, the joy of opening the new KRLA, as different from KXLA. And my wife and I had decided that it was simply not sensible for her to come all the way out here for such a short trip, so she stayed at home, the only time in all of the times we have been to Los Angeles that she has.

Q. Now, what if anything did Donald tell you upon your arrival in Los Angeles? A. He told me the place was a mess.

Q. By "place," what do you mean? A. I beg your pardon. KXLA.

Q. Did you on August 20th visit KXLA? A. With Don and Ed Schulz, we visited Bill Wheatley at KXLA.

Q. What was the purpose of this visit? A. There was to be an audition of the sound of the station, a dry run of the station, compressed, of course.

Q. What if anything were you asked to do with respect to this dry run? A. Donald asked me if I would keep notes of my views, their

views, mechanical production faults, and so on, of that audition.

Q. Did you keep such notes? A. I did.

Q. Now, what specifically happened, insofar as you know, at this meeting or this audition of August 20th? What reaction, if any, did you express? A. I was shocked by the lack of what I believed to be intelligent preparation, of what I believed to be intelligent choice of disc jockeys. I felt terribly sorry for my brother.

Q. Did you so advise Don? A. I certainly did. He needed no advice on it.

Q. What if anything was done after this meeting of August 20th? In the afternoon of August 20th where did you then go? A. I left Pasadena in a car with Ed Schulz and my

brother. We drove to Los Angeles.

Q. Were any decisions made by Donald during this period of time? A. During this time Donald said we should get rid of the whole crew of them. I said, "It is going to cost a fortune." And Ed Schulz counseled then, he said, "Well, we should keep"--and he named the ones that we all agreed were worthwhile--"and get rid of the others."

Q. Having made that decision individually or in concert, what then did Don do insofar as you know? A. What did he do?

Q. Yes. Did he call a meeting of any kind? A. A meeting was called for that night.

Q. Who attended that meeting? A. Schulz, Donald, myself, and Wheatley. But Wheatley did not stay for the entire meeting. Wheatley went home sometime during the course of the evening and left us there--as we all went home some time in the course of the evening.

Q. What was the purpose of this meeting called by Donald on the evening of August 20th? A. It was necessary to get new announcers, and quickly.

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Q. What was your next contact or conversation with Allen?

A. I believe it was probably on Sunday, August 30th, at which time I told him that because of the difficulties of opening the station without the new morning announcer, that it would be necessary for us to do some kind of promotion, that we would be in touch with him no later than, I believe it was, Monday night, August 31st.

Q. Did you get in touch with him subsequently? A. I did.

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Q. What did you do, if anything, with reference to this "promotion"? A. By long distance telephone we discussed two plans, either, first, a contest which would invite the listener to locate the distance Perry Allen would travel each day on his way to California, identify the hotel he stayed in, and so on. While I was discussing this with him on the telephone, I realized the thing was palpably foolish: that he would have to come by some strange means of transportation in order to take two weeks to get from Buffalo to Los Angeles.

And I usggested the second one, of "Find Perry Allen."

Q. Did you issue any instruction to Allen? A. Yes, I did. I asked him at once to prepare tapes to be done in his own breezy manner, and get them off to KXLA without fail.

Q. What tape, what instructions, if any, did you issue with respect to these tapes? A. I described the main points of a contest, that is, that each day, that the contest would start at \$10,000, and that each day it would drop by \$1,000 until the day he arrived in Los Angeles, at which time it would have reached the floor of \$1,000, and that if necessary, if the clues weren't sufficiently clear, we would take him out on the city hall steps with a big arrow pointing, "This is Perry Allen; come and get him."

Q. What if anything did you tell him with reference to the contents of the tapes that he was to prepare? A. I told him to stress the promotional aspect of it. To get everyone, if it were possible, in Los Angeles accosting every little man in Los Angeles with the statement, KRLA, Eleven Ten. At this point the call letters were unknown to most everyone in Los Angeles and the frequency was in an almost similar condition so far as knowledge by Los Angeles listeners. And this was one of the main points to get across. And also, of course, the name of the new morning DJ, Perry Allen.

Q. Now, pursuant to these instructions, did Perry Allen in fact send tapes to the station? A. He did.

Q. Did you listen to those tapes before they were played? A. I listened to perhaps the first two excerpts, first two announcements on the first tape that came in. They were typical Perry Allen style announcements, and I immediately gave them to whoever was handling traffic and so on, and they arranged to put them on the air.

Q. Did you issue any instructions with reference to announcers who were working at the station as to the Perry Allen contest? A. Not to my knowledge.

Q. Were they to make any live announcements, or do you know? A. They were.

Q. What instructions did you give insofar as those live announcements were concerned? A. They were to be tags which would be done extemporaneously by the announcers.

Q. Did you write any copy for those announcements? A. I did not.

Q. To your knowledge, was any copy written for those announcements? A. Not to my knowledge, no, sir.

Q. Did you at any time hear any of these announcements on the

air? A. Yes, I did. I heard one on Friday morning, that is, September the 4th, at about 6:30.

MR. RAWSON: A. M. ?

THE WITNESS: Friday morning, I said.

BY MR. DOWD:

Q. What did you hear, if anything, if you recall? A. I heard this announcement, which I believe led me to believe--I beg your pardon --which led me to believe that Perry Allen might be in Los Angeles.

Q. What did the announcement consist of? Did it consist of a tape?

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A. I think it did.

Q. Was there any live voice, any studio voice? A. I think there was.

Q. At this time was Perry Allen in Los Angeles? A. He was in Buffalo.

Q. Where was he working in Buffalo? A. WKBW, a radio station in Buffalo.

Q. Now, was Perry Allen found pursuant to this contest? A. He was.

Q. Where was he found? A. Buffalo.

Q. And by whom? A. Two men--Purcell Arlington and Zingale.

Q. How did you learn that they had found Perry Allen? A. The morning that I heard this one announcement on the air, I went down to the radio station and I was told there was an urgent call from Perry Allen in Buffalo. I accepted the call. Perry Allen told me that he had been found, and he named his finders. Shortly thereafter, one of them-- I have forgotten whether it was Arlington or Zingale--called me.

Q. What did he tell you and what did you tell him, if you recall?

A. He said, "We have won \$10,000, my partner and I."

Q. What did you tell him? A. I said, "Congratulations. Please make every effort

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to come to Los Angeles at once so that the contest promotional aspect can be properly fulfilled by the station."

He said, "One of us is from a St. Paul radio station."

I said, "Then you will recognize how important it is to capitalize on this contest, now please hurry down here."

He said, "We are terribly tired, we have driven all night from St. Paul. We will get a few hours sleep and we will call you back."

I never heard from him again.

Q. Did the station make any announcement upon receipt of this information with respect to the Perry Allen contest? A. At once they made announcements, saying that Perry Allen had been found and that Messrs. Zingale and Arlington had won \$9,000.

Q I thought you said that they claimed \$10,000. A. They did.

Q Why did you say nine? A. Because the price had dropped by \$1,000. This was the second day of the contest.

* * * *

[458]

Q. Now, Mr. Cooke, you referred to the fact that you

[459]

called Donald and told him what had happened. Did you discuss with Donald at any time prior to the beginning of the Perry Allen contest the details of that contest? A. Not the details. I discussed the overall philosophy of it, which was, as I said previously, to stir up much interest in the call letters, in the frequency, and in Perry Allen's name.

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[460]

THE WITNESS: He has gone ahead of that, and, Mr. Examiner, I left KRLA on Monday, September 14, 1959, but returned for one hour or thereabouts on Monday, September 21, 1959.

PRESIDING EXAMINER: And that was the last?

THE WITNESS: That is right, sir. I have not been there since, except to meet with Mr. Dowd two or three days ago, and I haven't been back to Los Angeles since I left Los Angeles on Saturday, September 26, 1959, about 13 months ago.

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[475]

CROSS-EXAMINATION

BY MR. RAWSON:

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[526]

November 3, 1960

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[624]

Q. Now, in response to Mr. Dowd's question, you got in touch with Mr. Allen subsequently. Was that on August 31st? A. That was on August 31st, I believe.

Q. And was this the day or the evening when you received the telegram from the Federal Communications Commission advising that you could go on program test authority? A. This would be the evening of the day on which the telegram was received from the Federal Communications Commission granting permission to test for the 50 kilowatts.

Q. Now, what was the purpose of this telephone call? A. To get

Perry Allen to make tapes which would promote listening to KRLA, which would promote wider knowledge of the frequency 1110, and which would publicize Perry Allen's name.

Q. Did you tell Perry Allen in those tapes to announce that he was to be searched or looked for in Los Angeles, in Los Angeles restaurants or at the ball park? A. I can't honestly say to that; I may have. The important thing that I tried to get across to Perry Allen was

[625]

the promotion.

Q. What else did you tell Perry Allen about? Did you instruct him to prepare tapes? A. I did, sir.

Q. And he was to prepare how many tapes according to your instructions, if you recall? A. I think it was ten days, sir, because the contest prize was to drop by a thousand dollars a day. That would be nine days, I guess it is, sir.

Q. Now, at the time you talked to Perry Allen on August 31st, had you been advised when Perry could report to work at Los Angeles? A. Yes. We expected him here on Saturday, September the 12th.

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[628]

Q. Did you advise the announcers who handled the Perry Allen show for the first two days that they were to ad lib along with the tape, and instruct them to say:

"Go out into the streets of Los Angeles, look in restaurants or in ball parks for Perry Allen" and to generally give the impression that Perry Allen was located in Los Angeles? A. I suppose I did.

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[636]

Q. What was the name of this contest which Mrs. Bier won?

A. I don't know whether it had a name.

Q. Was it The Golden Key contest? A. Well, it was called a number of things. It was called "Turn on The Fifty KW Transmitter," "Find the Golden Key"--it was a number of things. It was no stern and rigid title such as "Find Perry Allen." But among us we call it the Key Contest.

Q. Was the Perry Allen contest conceived by you, Mr. Cooke?

A. Yes, sir.

Q. Was the Golden Key contest conceived by you? A. I think it was a joint conception, if there can be such a thing.

Q. What do you mean by a "joint conception"? A. There were suggestions made by various people of how best we could capitalize on the failure to get on with the 50 kilowatts at once. You recall the circumstances surrounding the 50 kw test.

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[637]

THE WITNESS: There could easily have been an embarrassment in connection with the immediate beginning, in connection with the failure to come on the air with 50 kilowatts on Monday, September 1st, so that this joint conception that I spoke of resulted in a contest which was designed to relieve the embarrassment for failure to come on on that date.

The idea was that a key would be buried which, when found, would open or turn on, switch on, key on, the new 50,000 watt transmitter. And a great deal of hoopla, promotion, publicity was given to this contest. Clues were offered on the air. Clues were read on the air.

BY MR. RAWSON:

Q. What was the prize? A. In the beginning when the contest started, \$50,000 if he could find the key.

Q. And how was the prize to be--was this \$50,000 to be reduced or-- A. I think in most of these contest, yes. As the clues got easier, the prize would be reduced commensurate with the problem, the difficulty of finding the key or of locating the item that was being sought.

[638]

Q. And how was this prize to be reduced; in what amounts and in what days? A. So long as the clues were ambiguous the prize was to stay at \$50,000. As the clues made it easier, clearer, for a person to find the key, again in proportion the prize would go down, be reduced.

[639]

Q. Who wrote the clues for this contest, if you recall? A. The clues were written by Bill Wheatley and a friend of mine.

Q. Is the friend of yours--do you wish to maintain that confidential? Any reason for maintaining this confidential?

MR. DOWD: I have no privilege, I can't claim it.

PRESIDING EXAMINER: Who was it, Mr. Cooke?

THE WITNESS: What was his name, sir?

PRESIDING EXAMINER: Yes.

THE WITNESS: Frank Loy.

BY MR. RAWSON:

Q. Is he in Los Angeles? A. Yes, sir.

Q. Is he employed with Young & Ribicam? A. No, sir.

Q. With Arthur Young? A. No, sir.

Q. Were any of the clues written by Frank Loy broadcast? A. They may have been broadcast as he wrote them or they may have been edited. And by "edited," I mean that the nub of the clue would be retained but the rhyming could have been improved on, and it was. I mean Loy's rhyming.

Q. When did this contest begin? A. I think it was Sunday, August 30th.

Q. When did it end, if you recall? A. Yes, I do. September 7th, Labor Day.

Q. Did this contest run concurrently or simultaneously with the Perry Allen promotion, contest? A. Well, if you use a wide definition of the meaning of "concurrently," yes. The Perry Allen contest ran for a day and a few hours during the time the key contest ran, during the week or eight days the key contest ran. I don't believe they ran side by side through the entire life of the key contest, no.

Q. Was Mr. Wheatley directed by you or told by you to write these clues? A. Yes, sir.

Q. Was Mr. Wheatley told where the key was hidden? A. No, sir. When he wrote the first clues, no, sir.

Q. Were these clues broadcast? A. Yes, sir.

Q. How was Mr. Wheatley to write clues if he didn't know where the key was hidden? A. All of the clues were submitted to me before they went on the air. I knew where the key was. And as I said earlier, the clues were most ambiguous. The key could have been at the north end of Los Angeles, the south end of Palos

Verdes--anywhere in this area.

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Q. Do you recognize those clues, Mr. Cooke? A. I am reading them now, and I recognize them.

MR. DOWD: Would it be sufficient, Mr. Rawson, to not have a positive identification, or do you want each one from a positive identification point of view?

MR. RAWSON: I want the witness to be satisfied that these were the clues that were written and broadcast.

[643]

PRESIDING EXAMINER: What do you say, Mr. Cooke?

THE WITNESS: I would say, yes.

MR. RAWSON: I offer these, Mr. Examiner.

PRESIDING EXAMINER: Any objection?

MR. DOWD: I would like to know what the materiality is.

PRESIDING EXAMINER: What is it, Mr. Rawson?

MR. RAWSON: The materiality, I believe, is quite evident under the issues in the proceeding as to the programming of the station.

Issue No. 1 relates in part to the Perry Allen contest-- Issue 2, excuse me--relates to the Perry Allen contest.

Issue No. 1 reads as follows: "To determine whether in the light of its operations since it acquired Station KRLA, the licensee's program proposal contained in its application for Commission consent to assignment of license were made in good faith."

I think clearly under Issue No. 1 this is admissible. Under Issue No. 2, I think it is admissible as a matter of law in order to establish, to indicate, of course, that the Perry Allen contest itself was not just an isolated contest of its kind. And I think that this is admissible in order to establish that not only was the Perry Allen contest--well, to substantiate and corroborate the nature of contests which the station did broadcast under Issue 2.

But apart from Issue 2, I think clearly it is admissible

[644]

under Issue No. 1.

PRESIDING EXAMINER: This is the Golden Key Contest, as I understand it, which was discussed last Friday morning in the prehearing

conference. And I think, in the interests of expediting matters, Mr. Dowd indicated he would not question the relevancy of evidence concerning that contest under the issues.

MR. RAWSON: That is correct.

PRESIDING EXAMINER: "But again, in the interest of concluding this so there may be no more reservations that we have tried to withhold information, I will go ahead with this contest, the Golden Key Contest, as I say, on the time basis it fits into the progression of the station. This again may have some effect upon the determination of the Commission as to witnesses. But in doing so, I do note, as I say, the reservation that I have some question as to its materiality."

Now, Mr. Dowd, what do you say?

MR. DOWD: I indicated that I had reservations as to its materiality. And I would say now that I still have those reservations and would prefer to have a ruling upon it, in spite of the statements which you have read, of which I am well aware.

And I would like to state briefly the reasons for this:

One, if this is put in, in the nature of an attack upon

[645]

the same basis as would be implicated or implied by the fact that a contest of the "Find Perry Allen," as Mr. Rawson is now stating, I would note that the Commission included a specific issue on the Perry Allen contest, and gave notice, and so forth, in accordance with the rules of procedure.

If Mr. Rawson is offering it under Issue No. 1, I do not see how the conduct of a specific contest over a limited period of time goes to the question of intention of the licensee to perform its program proposals.

PRESIDING EXAMINER: Overrule the objection. Let it in.

(BROADCAST BUREAU EXHIBIT 1 WAS RECEIVED IN EVIDENCE.)

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MR. DOWD: I would note an exception, Mr. Examiner.

PRESIDING EXAMINER: Yes, sir.

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[646]

BY MR. RAWSON:

Q. Could you describe briefly for the record, Mr. Cooke, the nature of the programming during these days. A. This is September 1, 2, 3 and 4?

Q. Yes, sir. If you can recall. A. On September 1, which was a Monday--no, I am sorry. September 1 was Tuesday. August 31st was a Monday, is that correct?

Q. September 1 was a Tuesday. A. Tuesday. On Tuesday, September the 1st and Wednesday September the 2nd, the KRLA programmed nothing

[647]

but contests. They talked, the announcers, either on tape or live, through the 48 hours you have asked me to describe.

Q. Yes, sir. A. Do you want me to volunteer information here or not, Mr. Rawson?

Q. Only--

PRESIDING EXAMINER: Just facts to your own knowledge, according to your present recollection.

THE WITNESS: Yes, sir. The clues for the Golden Key Contest, a telephone game called "Don't Say Hello, Say KRLA," and another telephone game in which names of Los Angeles residents were picked from the telephone book and they were asked to call the station within a stipulated time. If they did so, they won money. If the stipulated time were elongated, they won less money. And if it were further elongated, they won still less money. If they didn't call, they didn't win any money.

Then on Thursday, September 3rd, the popular music program of

KRLA began and continued through to the period you have asked me to describe, Friday, September 4th.

BY MR. RAWSON:

Q. In other words, for the entire four days, 24 hours a day, it was solid talk? A. I didn't say that at all. I said Tuesday, September 1st and Wednesday, September 2nd, we ran nothing but solid

[648]

talk which was tied in completely and irrevocably with these contest.

Beginning, I said, Thursday, September 3rd, and continuing through to the time you have asked me to describe, Friday, September 4th, we broadcast our popular music programs.

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[650]

Q. The contest, you say, commenced on August 30th. Can you testify as to when the key was hidden? A. Yes, sir. The key was buried on Saturday, August 29th.

Q. Who buried the key? A. I did.

Q. When did you advise whoever wrote the clues as to where you had buried the key? A. When he first asked me about the first clues, which if they are in chronological order, would be the first ones on those sheets that have been introduced as Exhibit No. 1 of the Bureau.

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Q. Do you understand the question? A. I didn't advise him where the key was buried, when he wrote the first clues.

Q. When did you advise him in this respect? A. I believe that it was as late as Friday, September 4th, or Saturday, September 5th, that I so advised him where they key was buried.

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REDIRECT EXAMINATION

BY MR. DOWD:

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[662-A]

Q. Do I understand, Mr. Cooke, that a prize of \$5,000 was awarded at the termination of this Golden Key Contest? A. I remember it particularly well.

Q. Was it? A. I say, yes, I remember it particularly well.

Q. Was the key found by someone who, as far as you know, determined it from listening to the clues? A. Yes, sir.

Q. Now, with reference to the contest that you referred to as "Don't Say Hello," was any money or prizes awarded pursuant to that contest? A. Yes, sir.

Q. With reference to the other telephone contests that you referred to, were prizes awarded to listeners for that contest? A. Yes, sir.

Q. During the time that you were program director or acting as program director of KRLA, was any contest conducted by that station which did not actually award prizes to winners thereof? A. No, sir.

[663]

Q. Mr. Cooke, with reference to the key in the Golden Key Contest, was the key found in the location in which it was originally buried? A. No, sir.

Q. When was the key found; or when was the key placed, if you know, in the location in which it was actually found? A. I believe it was buried on Thursday, September the 3rd.

Q. And when did-- A. At that location.

Q. And when, to the best of your recollection, was Mr. Wheatly actually advised as to the location of the key? A. I think it was Friday or Saturday, September 4th or 5th.

Q. When was the key actually found? A. The key was found Monday, September the 7th.

Q. In your opinion, sir, from your knowledge of the contest and such examination as you may have made of Broadcast Bureau Exhibit No. 1, would it have been likely that anyone listening to those clues broadcast from August 30th to September 3rd, let us say, would have found the key from a study of those clues? A. It's the closest thing to being impossible.

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[669]

RECROSS-EXAMINATION

BY MR. RAWSON:

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[670]

Q. Can you state where the key to this Golden Key Contest was found ultimately? A. Pallas or Paulas--I'm not sure which--I think it is Pallas Verdes.

MR. DOWD: With reference to any particular area can you identify it?

BY MR. RAWSON:

Q. Marineland? A. Yes. It's across the road from Marineland, one of the entrances to Marineland.

Q. Now, was this the last location, namely, where it was located on Thursday, September 3rd? A. Yes, sir.

Q. Had it only been hidden in two locations? A. Yes, sir.

Q. Who hid it in the second location? A. My friend, Frank Loy, L-o-y.

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[671]

DONALD RALPH COOKE

a witness called by and on behalf of KRLA, having first been duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DOWD:

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[687]

November 4, 1960

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[715]

Q. Now, sir, referring to the period in August of

[716]

1959, can you state when you came to Los Angeles at that time? A. I
came to Los Angeles August 12th, and remained until August 21st.

Q. Can you account for your activities or state, rather, what you
did during that period of time beginning with August 12th. A. Most of
my time was spent during that period engaged in the Hollywood sales
office organizing the sales department of KRLA.

Q. You referred to the fact that you attended a studio recording
session briefly at that time. When was the first time that you went to
the studio in Pasadena during that August visit of August 12th to August
21st? A. I believe the first time was August 20th, if my recollections
are correct.

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[722]

Q. When, sir, did you leave Los Angeles on this visit? A. I
left on August 21st for New York.

MR. DOWD: Mr. Rawson, would it be appropriate to note on the record at this time that with respect to the dates of arrival and departure that the witness has available to him a memorandum of dates?

MR. RAWSON: Yes. So stipulated.

BY MR. DOWD:

Q. What was the reason for your departure to New York? A. Personal and business reasons.

Q. Mr. Cooke, what, if anything, did you do with respect to issuing instructions or requests with respect to the operation of KXLA and KRLA subsequent to August 20th, or rather on August 20th and August 21st before leaving Los Angeles? A. I asked Jack Cooke if he would take over the duties as program director to help us out of this chaotic condition that we were in at that time.

[723]

Q. Did he agree to do so? A. Yes, he did.

Q. Did you discharge Mr. Wheatley as program director at this time? A. No, I had not.

Q. Why not? A. Well, I felt that Bill had still good talent and that after the program had been set up for him, the programs had been set up for him, properly for him, that he could carry on as program director of KRLA.

Q. Where did you go after you left Los Angeles on July 21st? A. You mean August 21st?

Q. August 21st. A. I went back to New York.

Q. Were you in New York for the period August 22nd until September 15th of 1959? A. Yes, sir.

Q. Did you during this period of time ever receive any written communications from your brother, Jack Cooke? A. No, sir, not that I recall.

Q. Did you ever receive any communications from your brother? A. Yes. We were in communication on the telephone.

Q. What was the purpose of these communications?

[724]

A. To discuss the progress of the programming, to discuss the problems inherent in what we had inherited from Bill Wheatley, and promotions and contests that would be tied in with the new KRLA.

Q. Did you authorize or approve the Golden Key Contest? A. I approved the contest as set up in a budget, any of the promotions and contests that might possibly take place. I had geared approximately \$50,000 in the budget itself for promotions and contests. The details I left entirely up to the program department.

Q. Was this true of the other contests that were carried on during this time? A. Yes, sir.

Q. Do you have any personal knowledge of the details with respect to the Perry Allen contest of your own knowledge? A. No, sir.

Q. You are aware that such a contest was run? A. Yes, sir.

Q. Was the budget item of \$50,000 for promotion used during this period of time? A. It was almost used basically on all different types of promotions and contests. I think by "promotion and contest," too, Mr. Dowd, I must stress the magazine insertions, and so on. This was all part of promotion and contest budget, as you know.

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[735]

Q. Did you receive or did you become aware of the Commission's letter of December 16th which I have just referred to? A. Yes, sir.

Q. After receiving that letter, did you have occasion to file with the Commission a response? And I hand you now for reference a document dated February 12, 1960, addressed to Mary Jane Morris, Secretary, in re your reference 8419, and ask you, sir, if that document was signed by you? A. Yes, sir.

Q. Was it filed with the Commission? A. Yes, sir.

Q. Prior to filing that document with the Commission, what steps, if any, did you take? A. I went to Los Angeles to investigate with Ed Schulz and Herb Heiman actually what had transpired for the week of October 18 through October 24.

Q. Did you at the same time make any investigation with reference to the other questions raised by the Commission in

[736]

its letter of December 16th? A. All of them, sir.

Q. Did anyone accompany you on your trip to Los Angeles in January? A. Yes. Thomas Dowd.

Q. What was the purpose generally of that trip? A. The purpose of the trip was to clarify all the issues and to set in motion everything that we had promised the FCC.

PRESIDING EXAMINER: What do you mean, clarify all the issues, Mr. Cooke, so we can have it clear at this point on the record?

THE WITNESS: Well, there were four issues in the McFarland letter itself, sir.

PRESIDING EXAMINER: I see. Proceed.

BY MR. DOWD:

Q. Did you, specifically with reference to this issue concerning the question of falsification of logs, talk to Mr. Schulz? A. Yes, sir.

Q. And did you receive an explanation from him as to what had taken place? A. Yes, sir.

PRESIDING EXAMINER: Excuse me, Mr. Rawson. Do you have

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those insertions in the logs handy--

MR. RAWSON: Yes, sir.

PRESIDING EXAMINER: --so that I can look at them, please?

MR. COHEN: Copies too.

(Discussion off the record.)

BY MR. DOWD:

Q. I call your attention specifically, Mr. Cooke, to an affidavit which is attached to your affidavit, which affidavit is dated February 5, 1960, and signed by Mr. Edwin V. Schulz, wherein it states inso--

MR. RAWSON: Mr. Examiner--are you reading from the affidavit of Mr. Schulz?

MR. DOWD: Yes. Which was filed with the Commission under Mr. Cooke's affidavit. And I believe for the purpose of identifying his position at this time--I am not asking this for the truth or the falsity of the assertions made by Mr. Schulz but merely asking it as a preface to a question of Mr. Cooke.

MR. RAWSON: Yes, sir, but I think before we have anything read from an affidavit that is not in evidence, that we must first have the affidavit in evidence.

Now, I presume Mr. Dowd is going to urge that the material in question would be admissible not for the truth of what is contained in the statement but as a basis on which the witness took certain actions or made certain statements himself.

[738]

PRESIDING EXAMINER: I think that is his intention, yes, sir.

BY MR. DOWD:

Q. --wherein it states--

PRESIDING EXAMINER: Excuse me, sir. Will Mr. Schulz testify here?

MR. DOWD: Not as my witness.

MR. RAWSON: That is one of the problems I have, Your Honor.

PRESIDING EXAMINER: I see.

BY MR. DOWD:

Q. -- "Insofar as the logs for the week of October 18 to 24 show the addition of 'Thought for Today' I accept full responsibility.

There was no intention to mislead the Commission by the addition of these notations, but in fact the deletions were made to reflect what had actually taken place. The sequence of events which resulted in my instructions to make these additions was as follows; the broadcast of 'Thought for Today' as a regular feature commenced during the second week of October 1959. Instructions were issued to the program department, who carried out the instructions immediately by giving the necessary instructions to the announcers. Unfortunately, the traffic department did not receive instructions to schedule these announcements on the program logs. When the analysis of the week of October 18-24 was completed,

[739]

it was noted that the analysis did not reflect any religious programming which we knew to be contrary to the actual facts. Pursuant to my instructions, the notation with respect to 'Thought for Today' was added to the program logs. No 'on' or 'off' time was indicated and the notation was not initialed or marked in any way to bring it in conformity with notations made or deleted at the time of broadcast, all of which are verified by the announcer on duty. I have now been advised by counsel that such additions to the logs should not be made even though not intended to reflect an actual time of broadcast but that this information should have been submitted to the Commission in the form of additional comments or notation elsewhere in the renewal form. My decision with respect to this matter was made without instructions from or advice to Donald Cooke, inasmuch as I did not feel that it involved a policy decision."

My question to you, Mr. Cooke, was, at the time you submitted your affidavit in response to the Commission's letter in your document

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dated February 12, 1960, to which was attached the affidavit of Edwin V. Schulz dated February 5, 1960, was it your belief that the statements made by Edwin Schulz were true and accurate? A. Yes, sir.

Q. Had you in fact at any time issued any instructions

[740]

to Mr. Schulz to make the additions which have been referred to? A. No, sir.

Q. Did you have any knowledge, prior to the time that the letter was received from the Commission on December 16 and your investigation which was made thereafter, that such additions had been made to the logs? A. No, sir.

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[744]

CROSS-EXAMINATION

BY MR. RAWSON:

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[779]

Q. Mr. Cooke, how long have you now been, how long has it been since the Commission approved the consummation of the assigning of KXLA?

MR. DOWD: I think, Mr. Examiner, the record is clear on that.

BY MR. RAWSON:

Q. That is since May 1st up to the present time? A. That is right.

Q. That is approximately a year and a half, is that correct, sir?
A. From that date to this, yes, sir.

Q. Now, how much time would you estimate that you have spent in Los Angeles since that time? A. I can give you the dates I have been here, if that

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would be of any help.

I was here April 29th to May 4th. I was here August 12th through the 21st. November 9th through November 20th. January 22nd to February 20th. March 14th through March 18th. June 6th through June 10th. And, of course, presently.

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[791]

Q. I hand you, Mr. Cooke, what has been marked for identification as Broadcast Bureau Exhibit No. 4. Would you please identify that?

A. Yes. It is a letter from me to Herb Heiman, dated April 12, 1960.

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MR. RAWSON: I offer in evidence, Mr. Examiner, Broadcast Bureau Exhibit No. 4.

MR. DOWD: No objection.

PRESIDING EXAMINER: It will be received in evidence.

(BROADCAST BUREAU EXHIBIT NO. 4 WAS RECEIVED
IN EVIDENCE.)

BY MR. RAWSON:

Q. Now, in this letter, Mr. Cooke, is it correct that you say that:

"Just to confirm my feelings about the Sunday religious and public service programming, before doing

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anything, the following points should be answered in the affirmative:

"1. Tommy Dowd should be consulted and should approve the move.

"2. No move should be made until about a month

after the FCC has approved KRLA's request for its license renewal.

"At that time undoubtedly we will be able to drop some of the present programming, but we will do so with the full approval of Pierson, Ball & Dowd."

MR. DOWD: There was one word left out, Mr. Rawson--

"...we will only do so with the full approval of Pierson, Ball & Dowd."

MR. RAWSON: Excuse me. The quote should be: "...but we will only do so with the full approval of Pierson, Ball & Dowd," of course.

BY MR. RAWSON:

Q. What do you mean, sir; what did you have in mind when you said that, "at that time undoubtedly we will be able to drop some of the present programming"? And this is after the FCC renews your license.

A. Well, I had expected the FCC to renew it before this period of time. But the reason for the letter itself was that we were coming into the summer months, and the schools, the public schools, the high schools and the colleges would no

[793]

longer be in session, which would make it extremely difficult for us, if not impossible, to continue such shows as "California," "Topic Youth," and "Seminar."

Q. What do you mean in the letter where you say, "just to confirm my feelings about the Sunday religious and public service programming"?

Does this relate, sir, to your feelings which are expressed in the Broadcast Bureau Exhibit No. 3? A. No, sir. This is relating to the summer period coming up in which we had to make some necessary moves.

Q. Do you have any other explanations? A. No, sir.

Q. Now, Mr. Cooke, you testified, I believe, that, upon receipt

of the Commission's 309(b) letter of December 16, 1959, you came to Los Angeles? A. Yes, sir.

Q. Do you recall that precise date, sir? I have forgotten. A. This was January 22 through to February the 20th.

* * * *

Q. Could you tell me what was the reason for your visit at that time? A. The main reason for my visit was to set up a so-called crash program, to get every one of the public service features we had promised the FCC into effect on KRLA.

Also, as you know, KRLA was running in the red, and I was anxious to see to it that sales and other matters were bettered. The primary reason for the visit, however--I think that's your question, --was a crash program to get the public service programs into effect totally.

Q. At that point, at that time, were you charged with the responsibility of filing a response to the Commission's 309(b) letter by a particular date? A. Yes, sir. I think the date was February the 20th.

MR. DOWD: I would be willing to state that, under the initial letter, of the 309(b) letter, Mr. Examiner, that it provided for a response within thirty days of the date of December 16th, but I would like also at the same time--

MR. RAWSON: Well, I would like to conduct this aspect. I will stipulate to that.

MR. DOWD: All right. Well, no--

PRESIDING EXAMINER: Proceed.

BY MR. RAWSON:

Q. Did you request your counsel, Mr. Cooke, to obtain

an extension of the time in which to respond to that letter? A. Yes, sir.

Q. What was your reason, sir, for requesting such an extension?

A. I wanted more time to be able to put this program into effect.

Q. What, before you responded to the 309(b) letter? A. Yes, sir.

Q. You mean you wanted to show, submit, in response to the 309(b) letter, evidence that the programming proposed by you in your transfer application was being carried? A. Yes, sir.

Q. Now, in the letter which was received by the Commission asking for an extension of time to respond to its 309(b) letter, it is stated, and I quote--this is a letter dated January 13, 1960:

"As indicated, it is believed that the information which is presently on hand would fully serve to answer the Commission's letter, but in view of the extreme gravity with which Mr. Cooke views the Commission's inquiry of December 16, he does not wish to submit a response until he has had a full opportunity to satisfy himself of the complete accuracy of all the information that will be submitted by him."

That is the end of the quote.

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Now, that letter is dated January 13, 1960. It is signed by Mr. Dowd.

MR. RAWSON: I ask the Examiner to take official notice of that letter, which appears in Docket No. 13622, the docket of this proceeding, dated January 13, 1960, received in the Commission January 13, 1960, signed by Thomas N. Dowd.

PRESIDING EXAMINER: Without objection, that will be done.

BY MR. RAWSON:

Q. Now, Mr. Cooke, what do you mean when you say that you wanted full opportunity to satisfy yourself of the complete accuracy of all the information that was to be submitted or would be submitted?

MR. DOWD: This is most unusual. He did not say it, Mr. Examiner, and I object to the question; I said it.

PRESIDING EXAMINER: What do you say, Mr. Rawson?

MR. RAWSON: Well, Mr. Dowd is simply the counsel for the applicant, and I presume that anything Mr. Dowd says is done on the basis of requests from his counsel, and that the reasons for requesting it are the same as the reasons which the applicant has.

PRESIDING EXAMINER: Are you prepared to furnish the information, Mr. Cooke? You are aware of this document here Mr. Dowd has, I take it?

MR. DOWD: The objection, Mr. Examiner, was based on the basis of the question. He said, "What did you mean when

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you said"; and I stated he did not say it.

PRESIDING EXAMINER: I see.

MR. RAWSON: Mr. Examiner, this is most unusual.

PRESIDING EXAMINER: Well, let me--

MR. RAWSON: This reads--this is a statement that says Mr. Cooke, not Mr. Dowd--this statement says Mr. Cooke views the Commission's inquiry of December 16--

PRESIDING EXAMINER: I am going to let him testify, Mr. Rawson.

MR. RAWSON: Thank you, sir.

PRESIDING EXAMINER: Proceed, sir.

THE WITNESS: On a matter as serious as this I felt it necessary for me to make absolutely positively sure that what was being filed with the Commission--because we had had so many problems attendant to our opening, and so many problems attendant to the getting under way, I didn't want any more mistakes.

BY MR. RAWSON:

Q. Well, I don't quite understand. I ask you again, what did you mean when you say--

MR. DOWD: Mr. Examiner, I object to the form of the question, sir.

PRESIDING EXAMINER: I am afraid, Mr. Rawson, he did not say anything. But if something in here is attributed to him, I think he may explain that. This letter is signed by Mr. Dowd

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as counsel.

MR. RAWSON: Yes, sir.

PRESIDING EXAMINER: You may--

MR. RAWSON: In this letter, if you will notice, sir, it is stated that Mr. Cooke--Mr. Cooke desires--does not wish to submit a response until he has had a full opportunity to satisfy himself of the complete accuracy of all the information that will be submitted.

And what I want the witness to testify to is what information, just precisely what was he checking the accuracy of, what information was being checked as of this time?

MR. DOWD: Mr. Examiner, I think there is in evidence, has been incorporated, a McFarland letter dated December 16 which posed a number of questions, and Mr. Cooke was not only the only person who wanted to be satisfied as to the accuracy of the response, in view of the nature of the charges which involved a question of having filed false information with the Commission in which a question of falsification of the logs was involved; there were some other people involved who wanted to be sure of the accuracy. And I was one of them.

And I, upon the basis of that, think the question as to whether this had something to do with one thing or another is unfair, in view of the fact that this involves a legal matter, a question of interpreting a Commission letter of December 16th and the response which counsel filed pursuant

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thereto.

MR. RAWSON: May I respectfully disagree with Mr. Dowd, and

point out to the Examiner that there was in issue here the question of the Perry Allen contest. There was the question of whether or not, since the assignment of license, Jack Cooke exercised control, contrary to 310(b).

Now, what I am interested in knowing, simply, is, was he checking into the Perry Allen contest in order to determine its accuracy?

PRESIDING EXAMINER: Well, I think we can ask him that.

MR. RAWSON: Thank you.

PRESIDING EXAMINER: What do you say, Mr. Cooke?

THE WITNESS: Yes, sir.

BY MR. RAWSON:

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Q. Now, you testified earlier about an earlier time that you came to Los Angeles, and was this sometime in November? A. Yes, sir.

Q. And the purpose of this visit was to inquire concerning the facts surrounding the programming insertions that had been raised by the Commission; or had they been raised at that time?

MR. DOWD: They had not even been raised by the Commission at that time, Mr. Rawson.

BY MR. RAWSON:

Q. Why did you come to Los Angeles at that time? A. Came to Los Angeles because I wanted to see what the--I wanted to actually make an improvement in the sales picture. We were losing a lot of money, and I felt in a desperate position at that time.

Also, I felt that this had to begin the start of the public service features, even though the staff had told me that the problems were so tremendous to overcome that they would have problems incorporating everything that I wanted.

Q. Now, in this period between January 22 through February 20--

A. Beg pardon?

Q. In this period January 22 through February 20, 1960,

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did you make an investigation concerning the insertion--the question of the insertions in the program logs that had been raised by the Commission?

A. Yes, sir.

Q. Now, to whom did you talk in connection with that matter?

A. Talked to Ed Schulz and Herb Heiman.

Q. You talked to Mr. Heiman? A. I talked through, I think through both, but primarily through Ed Schulz.

Q. Did you talk to Mr. Heiman? A. Oh, I talked with him while I was there, yes.

Q. Did you question Mr. Heiman thoroughly concerning this matter?

A. I don't specifically remember. I know that I questioned Ed. Schulz thoroughly at that time.

Q. What were Ed Schulz' duties at that time? A. He was general manager.

Q. And who was the program manager? A. Program director was Herb Heiman--I'm sorry; he was the program production manager at that time.

Q. Who was the program manager? A. We did not have a program director.

Q. Who was responsible for programming, Mr. Heiman? A. Herb Heiman.

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Q. Did you talk to Mr. Heiman about this matter? A. I say I don't specifically remember, but I believe that I had Ed Schulz and Herb Heiman together. I know that I discussed it with Ed, and I'm quite sure that I discussed it with Herb.

Q. What did you ask Mr. Heiman, if you recall? A. I asked him,

I think, to pretty well verify what Ed Schulz had told me.

Q. And what did Mr. Heiman tell you? A. He verified the statement that Ed Schulz had given me, sir.

Q. Did Mr. Heiman tell you that this program had been-- that the insertions had been made by anyone? A. Yes, they'd been made after the logs had been filed.

Q. Did Mr. Heiman tell you whether or not these programs had been broadcast? A. Yes; I'm sure he did; I'm not positively sure, as I say. I believe I checked Herb Heiman after I checked Ed Schulz, just to make the entire story correct in my mind. And I believe that I asked Herb whether this statement was correct.

MR. RAWSON: We are now talking, Mr. Examiner, about the program insertions on "Thought for a Day" that Mr. Dowd referred to in the logs this morning.

MR. DOWD: About which I was allowed to go in only to the question of asking whether this witness relied upon the

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representation of Mr. Schulz, and where I was not allowed to go any further, if I recall.

PRESIDING EXAMINER: Well, we can go on with the examination.

BY MR. RAWSON:

Q. Did Mr. Heiman tell you that these programs had been broadcast? A. I couldn't specifically say. I know that Ed Schulz told me that, and as general manager I accepted it.

Q. You say that Mr. Heiman was present when you met with Mr. Schulz at this occasion? A. Not on that specific occasion, no.

Q. Do you recall talking with Mr. Schulz about this matter.
A. Yes, I do.

Q. Do you recall talking with Mr. Heiman about this matter?
A. I say that I don't specifically recall asking him the actual details. All I wanted, I believe, from Herb was a substantiation of what Ed Schulz

had said. I'm not positively sure of this. I do know I substantiated it with Mr. Schulz.

Q. Mr. Heiman was program manager at that time--or production manager at that time? A. Yes, but Ed Schulz was general manager.

Q. And Mr. Heiman was responsible, you testified, for

programming? A. Responsible for programming under Ed Schulz, yes.

Q. Is Mr. Heiman the first one you would go to in order to find out what happened in connection with logs? A. In this case, because Herb Heiman had--he was young and he had come from another station as a program production manager. Ed Schulz had gotten more and more into the programming end of it, and I felt as general manager that he would be the responsible party in this case.

Q. Did you make any other checks to ascertain whether or not this program had been broadcast? A. I didn't, but I believe that Mr. Dowd may have; I don't know.

Q. I mean--I am now talking about the period of January 22 through February 20. A. Yes, sir. Well, Mr. Dowd was in Los Angeles with me at that time, or part of that time.

Q. Did you inquire of anyone in the station, personnel, as to whether or not they had heard the program broadcast? A. Yes, I believe I did, and nobody could remember, because, you know, you have so many promotions, announcements, and so on, on a radio station you can't remember this is one.

Q. Did you make any other investigation in connection with this matter? A. I investigated, along with Mr. Dowd, Janice Crosby, I believe, and some of the other staff.

Q. You are now talking about the period January 22 through February 20? A. Yes, sir. I'm not sure of the actual staff that we contacted,

but we did contact more than the two or three.

Q. Did you talk to Janice Crosby? A. I didn't talk to Janice Crosby.

Q. I am speaking only of the period now January 22 through February 20. A. I talked to her, but I didn't talk to her, I don't believe--I don't recall--about this subject.

Q. Who was in charge of traffic at that time? A. Janice Crosby.

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[832]

BY MR. RAWSON:

Q. You state in this second-to-last paragraph:

"After the series of religious programs nothing would please me more than to remove the necessity of broadcasting a round table of churches in the 11:00 a.m. till 12:00 noon period Sundays. If both of you fellows feel that we should have a religious program on the air and, whether we want a religious program on the air or not, that we must broadcast one in order to conform to our promise to the FCC, why not put it on between 6:00 and 7:00 a.m., Sunday mornings?"

Now, I ask you, Mr. Cooke, who was making the decisions as to whether the licensee was going to comply with the

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representations that it made to the Commission? Was it you or was it Mr. Schulz or Mr. Heiman? A. I wish you would repeat the question again. I think I lost track of it halfway through.

MR. RAWSON: Could you read it back, Mr. Reporter?

PRESIDING EXAMINER: Read it, please.

(The pending question was read by the reporter.)

THE WITNESS: It was I, and it is I.

BY MR. RAWSON:

Q. Well, could you explain, then, why you would state, or ask them whether this program, a religious program, would be necessary in order to conform "with our promises to the FCC"? A. When I say "our," this refers to KRLA, if that is what you are referring to now.

Q. Well, why do you ask them, Mr. Cooke-- A. There was a reason in this instance, because, as you know, again, we had lost a great deal of money at KRLA. Ed Schulz was involved in the losses as general manager, and I asked him for the simple reason I felt that perhaps the 11:00 to 12:00 noon period Sundays could be sold commercially for at least the time being to get us out of this terrible loss position.

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November 7, 1960

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Q. When did you first talk with Jack Cooke about this matter?

A. Oh, I can't recollect the actual time, but it would be soon after I had talked to Ed Schulz.

Q. And what did Jack Cooke tell you? A. Jack Cooke said that there were tapes of Perry Allen that were made, that there were announcements throughout the entire day made by all the disc jockeys on KRLA, but that he couldn't recall that any of them had actually specified that Perry Allen was anywhere but in Buffalo or at some other area. There might have been--

Q. Did he tell you that he had issued instructions to announcers, certain announcers, to ad lib so as to indicate that Perry Allen was in Los Angeles? A. No, sir.

Q. Did he tell you that at the time that the announcements commenced,

that Perry Allen could not possibly have been in Los Angeles in time for the beginning of the contest? A. Yes, sir.

Q. Did he tell you that Perry Allen could not be in Los Angeles until September 12?

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A. Yes, sir.

Q. He told you all these things? A. Yes, sir. This was after the contest had run, as you know.

Q. Did he tell you any of these things before the contest ran?

A. Well, we had talked about Perry, and we were all hopeful--Ed Schulz, Jack Cooke and myself--that Perry could come to the job, start on KRLA as of September 3rd.

Q. Did he tell you at any time prior to commencing the contest that Perry Allen could not possibly be there until September 12? A. He told me that; I believe it might have been prior to the contest, but it was around about that date, yes, sir.

Q. Did you, under these circumstances, nevertheless authorize the contest? A. Yes, sir.

Q. You gave official sanction to this contest knowing that Perry Allen could not be in Los Angeles until September 12? A. Well, the details were worked out by the programming staff. All I knew was I gave the permission and the approval to run the promotion on the contest involved in this period of time.

Q. Did you ask them to run this contest for the specific sum of \$10,000?

[872]

A. Yes, sir.

Q. And you also authorized them to run the contest, the Golden Key Contest, for \$50,000? A. Right.

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[916]

HERB HEIMAN,

a witness appearing for and on behalf of the applicant, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DOWD:

Q. Would you state your name and address for the record. A. Herb Heiman, 835 South Morengo, Pasadena.

Q. What is your occupation, Mr. Heiman? A. Program Director, radio station KRLA.

Q. How long have you been employed by Station KRLA? A. Since September of 1959.

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[932]

Q. Mr. Heiman, there has been introduced in evidence Exhibit 20. And I call your attention to the paragraph in the middle of that page under the heading "Religion and Public Service." What was the purpose or what was your reason for the recommendation contained in that particular section of your memorandum? A. At the time this, these programs were being aired on Sunday mornings from 8:00 a.m. to noon, I felt that when summer would be upon us that there would be a tremendous amount of people going toward the beach and to resort areas. I felt that if we were not on their car radios by 10:00 in the morning that we would lose this portion of the audience for the rest of the day.

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Q. Referring to what has been marked for identification as Exhibit No. 23, can you state what these 16 pages consist of? A. Yes. Each of these pages is dedicated to an area or particular show aired on

KRLA, and each is a summary or a breakdown on the dates of the show, the time and the content.

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Q. By whom was this prepared? A. By myself.

Q. To the best of your information and belief, is the information and statement therein true and correct? A. Yes, it is.

MR. DOWD: I offer Exhibit 23 in evidence.

PRESIDING EXAMINER: Any objection?

MR. RAWSON: Are there any page numbers in this?

MR. DOWD: Sixteen pages.

MR. RAWSON: No objection.

(APPLICANT'S EXHIBIT NO. 23 WAS RECEIVED
IN EVIDENCE.)

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Q. Mr. Heiman, on December 16, 1959, the Commission addressed a letter to Eleven Ten Broadcasting Corporation to the attention of Edwin V. Schulz, wherein one of the questions raised read as follows:

"A review of the logs submitted by you for the week of October 18 to October 24, 1959 (as requested by the Commission's letter of October 28, 1959), indicates that you may have falsified the program logs for each of the seven days mentioned above by the addition of certain religious programming to the entries of other programs actually broadcast on those dates."

Do you have any information, of your own knowledge, with respect to the matters which are referred to in that statement? A. Yes, I do.

Q. And would you please state what your information is with respect to those matters? A. May I in a narrative give the incidents?

Q. Please. A. A program analysis was requested of us by the Federal Communications Commission, and Ed Schulz, General Manager of KRLA, enlisted the aid of myself, his wife, for a period of time my wife, and Janice Crosby, Traffic girl at the time, for a week end in which to make the analysis. We worked throughout a full Saturday and Sunday. The analysis was--

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Q. Was that the Saturday of October 31-November 1? A. Yes, it was.

Q. Proceed. A. The analysis percentages were completed by Sunday night late, and the logs and the analysis had to be mailed immediately after the completion of that analysis. Therefore, we double-checked everything on that Sunday night.

Q. Now, when you say "we," who was involved in this? A. Well--

Q. First, who was involved in making the analysis of the percentages? A. Well, we all compiled the information. I don't recall who broke it down mathematically. We fed the information to Ed Schulz, who was directing the operation of the analysis, and I don't recall who made the mathematical breakdown.

In double-checking late that Sunday night, Ed Schulz, I believe--

MR. RAWSON: Mr. Examiner, at this point I would like to depart from the narrative of this station. If this witness is going to commence testifying as to what Mr. Schulz told anyone or this witness told anyone, I want this by direct question and answer, because I want this witness to testify under oath what Mr. Schulz told him, what he told Mr. Schulz, because it may be necessary to confront this witness with Mr. Schulz' testimony. And the only way we can straighten this matter out is by having

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this witness give his version as to what Mr. Schulz told him under

oath and Mr. Schulz give his version under oath.

PRESIDING EXAMINER: To save time, Mr. Rawson, I am going to overrule the objection and permit you on cross to ask the direct questions again that you wish.

MR. RAWSON: All right.

PRESIDING EXAMINER: Proceed.

THE WITNESS: Mr. Schulz remarked, "We have no religion in our analysis, nor have we any on our logs."

He further remarked that, "We ought to have some."

BY MR. DOWD:

Q. If you can recall, now what did Mr. Schulz say to you or to anyone else who was present? A. He said, and I can practically quote his one remark, and that was, he said with a wink: "I did tell you, didn't I, Herb, to put a 'Word For The Day' or 'Thought For The Day' on the air beginning that week, did I not?"

This was not, I interpreted it, a question posed by him.

Q. What did you say? A. Something to the effect: If you say so. At this time we were all very busy.

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THE WITNESS: Before I went downstairs to work, I was in the room when Ed Schulz requested Janice Crosby to type in the "Thought For The Day" or "Word For The Day." I'm not sure which was used.

At this time, I believe, he figured out the percentages. That I will not testify to. I went downstairs thereafter. I

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did not see the logs, nor have I seen the logs with the addition aforementioned.

I did see the percentage breakdown which was then typed in in the final analysis. The bundle was--all the paper material was then compiled,

put together and, to the best of my knowledge, mailed out.

BY MR. DOWD:

Q. As production director, to your knowledge, was the program "Thought For The Day" or "Word For The Day", described on the logs for the week of October 18 to 24 as a two-minute religious program, broadcast during the period of those days in question? A. No, sir, they were not.

Q. Were you present in the room this morning when Mr. Cooke testified with respect to conversations with Mr. Schulz and yourself concerning his investigation of this matter? A. Yes, I was.

* * * *

Q. Were you present at any time in a meeting with Mr. Schulz and Mr. Donald Cooke when a question was asked by Mr. Cooke as to what took place in connection with the typing in of the program "Thought For The Day" or "Word For The Day" during the week for the logs October 18 to the 24th? A. Yes, I was.

Q. Was any question asked by Mr. Cooke of Mr. Schulz as to what had taken place? A. Yes. Mr. Cooke directly asked Mr. Schulz for the complete story on the reference made by the FCC to possible falsification of the logs.

Q. To the best of your recollection, what did Mr. Schulz tell Mr. Cooke with reference to this matter? A. Mr. Schulz told Donald Cooke that he simply wanted to reflect what had been or what he had believed to be aired during that week, and by making the addition on the log this would so reflect.

Q. But were you present when such a statement was made by Mr. Schulz? A. Yes, I was.

Q. Did you say anything to Mr. Cooke to deny that the statement given by Mr. Schulz was not entirely accurate? A. No, I didn't.

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Q. What was Mr. Schulz' position at the time this conversation took place? A. He was General Manager of KRLA.

Q. And what was your position? A. Production Manager of KRLA.

Q. Were you at this time working under the immediate direction and supervision of Mr. Schulz? A. I was.

Q. When, to the best of your recollection and knowledge, did these conversations between Mr. Schulz and Mr. Cooke take place in your presence? A. To the best of my recollection, during Mr. Cooke's visit in November of 1959.

Q. Now, Mr. Heiman, on December 16th the Commission raised a question. You stated these conversations, to the best of your recollection, took place in November. On December 16th the Commission raised a question with reference to these matters. Was there any time after December 16th when you were present at conversations between Mr. Schulz and Mr. Cooke in which this matter was raised?

PRESIDING EXAMINER: Now you are referring to a subsequent one?

MR. DOWD: I don't know. I am just asking him after December 16, 1959--

PRESIDING EXAMINER: All right, sir.

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MR. DOWD: --if he was present at any conversation between Mr. Schulz and Mr. Cooke.

THE WITNESS: I believe that the conversation to which I referred would have been during the January visit of Mr. Cooke, rather than during the November. I cannot rely on my memory to serve as to exactly which visit it was, but--due to the date of the letter, I would have to re-estimate that it was during the January visit.

BY MR. DOWD:

Q. Was there more than one such conversation in which you were a party? A. I don't believe so, no.

* * * *

Q. At any time after this conversation between Mr. Schulz and Mr. Cooke to which you have referred, did you advise anyone

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with respect to the matters to which you have testified here this afternoon under oath, any representative of KRLA? A. Did I at any time?

Q. After this time that Mr. Cooke interrogated Mr. Schulz. A. Yes, I did.

Q. And when, sir, was that, if you recall? A. Approximately one month ago.

Q. And to whom did you speak? A. To the counsel for KRLA, yourself, Mr. Dowd.

Q. At the time you spoke to me with reference to this matter was Mr. Schulz still employed by the station? A. No, he was not.

Q. You have testified here under oath as to what you know about this matter. Are those the same facts that you told me on or about one month ago? A. Yes, they are.

Q. Now, prior to that time--

(Discussion off the record.)

MR. DOWD: Mr. Examiner, I ask--

MR. RAWSON: Would you identify the source, Mr. Dowd?

MR. DOWD: Yes.

--that a document marked for identification as Applicant's Exhibit No. 24.

PRESIDING EXAMINER: So marked.

(THE DOCUMENT REFERRED TO WAS MARKED
APPLICANT'S EXHIBIT 24)

MR. DOWD: Be so marked. And the document which I have just requested to be marked has been furnished to me by Commission counsel and is dated August 31, 1960.

MR. RAWSON: Mr. Dowd is correct, Mr. Examiner. I want to point out, however, that I am giving him this only for convenience. The witness has been furnished a copy of this statement and, I presume, probably has a copy in his possession.

PRESIDING EXAMINER: Very well, sir.

MR. DOWD: Well, I think, Mr. Examiner, for Mr. Rawson's convenience I would also like to make a statement, then, of just how that copy came to be in his possession.

MR. RAWSON: I don't know that it is relevant, Mr. Examiner. It is up to the Examiner.

MR. DOWD: Well, Mr. Examiner, I would like to state--and this is on the record--that, shortly, immediately after I was advised by Mr. Heiman of the facts and matters to which he has testified here this afternoon under oath, that, upon my return to Washington, I called Mr. Rawson of the Federal Communications Commission and requested a conference; that the purpose of that conference was to advise Mr. Rawson that, for the first time, I had reason to believe that, in my opinion, the affidavit which had been previously submitted to the Commission over the signature of Mr. Schulz and as a part of an official response filed on behalf of KRLA through and by my

office, that that information was not true and correct; and that I related to Mr. Rawson, I believe in substance, the matters which Mr. Heiman has testified here.

I was advised by Mr. Heiman that he had given a written statement to the Commission investigators who had been present in Pasadena sometime prior to my visit, and I requested of Mr. Rawson that I be furnished

a copy of the statement that had been given to them by Mr. Heiman. Mr. Heiman had written out the copy--had written out the statement and did not retain a copy.

Upon my request, after I had told Mr. Rawson of the facts to which I have alluded, a copy of this statement was furnished to me, and I in turn sent a photostatic copy of the photostat to Mr. Heiman.

PRESIDING EXAMINER: Very well, sir.

BY MR. DOWD:

Q. I ask you now, sir, to look at what has been marked for identification as Exhibit No. 24 and state what that document is. A. This is a statement which I wrote before two representatives for the Federal Communications Commission on August 31, 1960, pertaining to--

Q. Well, never mind. It is a copy of the statement which you wrote? A. Yes, it is.

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Q. Is it signed by you? A. Yes.

Q. Who was present in the room at the time you wrote the statement which has been marked for identification as Exhibit No. 24?

A. Messrs. Cohen and Fitzpatrick, representatives of the Commission.

Q. Did you consult with any superior employee, superior officer or superior employee, of KRLA prior to signing that document which has been identified as Exhibit 24? A. I did not.

Q. Mr. Heiman, insofar as there may or may not be conflict between the statements and recitations in Exhibit 24 and the testimony which you have submitted under oath here, which is true and correct?

MR. RAWSON: Mr. Examiner, I think that is a conclusion that is going to have to be drawn from all the evidence in this record. I don't know that the witness is in any position to state a conclusion on the basis of these facts at this time.

PRESIDING EXAMINER: I don't think anyone could possibly know

better than he himself, Mr. Rawson. I will overrule you.

MR. RAWSON: All right.

PRESIDING EXAMINER: What do you say, Mr. Heiman?

THE WITNESS: The testimony which I gave today.

MR. DOWD: No further questions.

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CROSS-EXAMINATION

BY MR. RAWSON:

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[973]

Q. Now, Mr. Heiman, is it not true and correct that Mr. Schulz told you to purchase a book to be used in the studios for this program "Thought For The Day" and "Word For A Day"? A. It is.

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[974]

Q. When did he direct you to purchase this book? A. In the first week of November, I believe.

Q. Your testimony is that Mr. Schulz, after this period October 18 to 24, then, directed you to purchase a book? A. He did, sir.

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[975]

Q. Can you explain, sir, why this statement was given to the Federal Communications Commission containing information contrary to the testimony you are now giving on this record?

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THE WITNESS: On the date of August 31st, or by that date, I should say, I had not notified or discussed or had occasion to discuss with Mr. Dowd in person or with Mr. Cooke in person the exact details of the night on which the analysis was made. I was attempting to be as cooperative as I could to the representatives of the Commission on August 13th; however, I was knowledgeable of the fact that neither my employer or counsel had been made aware of the details of that night. It was my intention to be cooperative and yet be somewhat elusive as to the exact details of that night--mistakenly so, perhaps--at least until I could notify Mr. Dowd and/or Mr. Cooke of the exact details.

BY MR. RAWSON:

Q. Does that complete your answer, sir? A. Yes, sir.

Q. Is it your testimony that you did not have an opportunity, prior to three weeks ago or one month ago when you first talked to Mr. Dowd about this matter, to discuss it with Mr. Cooke or Mr. Dowd? A. I believe, if I did not say so, that I did not have the right opportunity to discuss in person with Mr. Dowd.

Q. You sat--you participated in a conversation between Donald Cooke, Ed Schulz and you let Mr. Schulz testify, according to what you say, to incorrect information, or furnish Mr. Cooke incorrect information, and you did not say anything; is that

your testimony? A. My testimony is, sir, I was present at the conversation. I don't believe I participated in that conversation. I did not--

Q. You were present-- A. I did not offer the actual facts at that time.

Q. You again saw Mr. Cooke in January, did you not? A. I believe this is the meeting to which we are referring, in January.

Q. And you also saw Mr. Cooke in February, did you not? A. This would be the same time, I think.

Q. Are you telling me that you had no--that you at no time were able to be alone with Mr. Cooke so that you could tell him what you now say is the truth concerning this matter? A. I didn't say I was at no time alone with him. I said there was no time that I felt was the right opportunity.

Q. What do you mean, sir, by the "right opportunity"? A. First of all, I was sure the responsibility of the details and facts were on Mr. Schulz' shoulder while he was General Manager. Subsequent to his leaving, perhaps I felt not enough moral conviction to confess, as it were, to my employer.

Q. Well, can you explain, sir, why, then, after waiting for a period of many, many months, you suddenly--your moral convictions became revived and you disclosed this information

[978]

to Mr. Dowd? A. I don't think it's a matter of reviving moral conviction; I knew it had to be told when the time was right. And I felt that the time certainly, to my counsel, to counsel for KRLA, he had to know at that time. I had no intention of withholding the proper facts from him or from Mr. Cooke.

Q. Why was the time now ripe to tell what you now say to be the truth? A. Well, sir, simple logic; certainly counsel must have all the details, all the facts which were at my disposal.

Q. You considered it more important to give your counsel what you considered now to be true facts than to give the Government of the United States the true facts with respect to this matter? A. I intended, as I said, to be elusive to the representatives of the Federal Communications Commission.

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[980]

Q. Mr. Heiman, do you know the definition of an agricultural

program? A. You mean according to the Federal Communications Commission?

Q. Yes. A. Yes, I believe I do, sir.

Q. Can you state it, or do you need assistance? A. I believe I can paraphrase it.

Q. Yes, sir. Would you do so. A. It's the transmitting of information of agricultural messages or needs to the members of the agricultural community, of farmers and growers, et cetera.

Q. Not agricultural population? A. Yes.

Q. Do you know the definition of an educational program? A. Yes, sir, I do.

Q. What is the definition of an educational program? A. It is a program whose content is produced by or formulated by an educational institution.

Q. You mean produced for or on behalf of an educational institution?

A. "By," I believe I said.

Q. Well, couldn't it also be produced for an educational institution?

A. I am not clear on that point. I presume so, but I couldn't testify to that.

Q. You testified, sir, I notice in Exhibit No. 23, page 3--is this an agricultural program? A. I believe it is, sir.

Q. According to the definition you just gave? A. Not to the strict definition.

Q. According to the definition you just gave, this is not an agricultural program? A. That is correct.

Q. You have always carried this as an agricultural program? A. Yes, I have.

Q. Was this before you came to the station? A. No, sir.

Q. After you came to the station? A. Yes.

Q. What other programs, sir, have you classified not in accordance with the Commission's definitions?

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[983]

MR. DOWD: May I ask for a clarification, Mr. Rawson. What other programs?

MR. RAWSON: Contained in Exhibit No. 23. I thought that was part of the question.

MR. DOWD: No, it wasn't. That is why I was objecting. A. To the best of my recollection or intent, none, sir.

BY MR. RAWSON:

Q. Does that include, does that exclude the Best Buy of the Day which was on page 3? A. Perhaps I am wrong, sir, but I believe this is an area which would be open to discussion.

Q. What do you mean by "open to discussion"? Is there any doubt in your mind as to the nature, as to whether or not the program on page 3 is classified properly? A. Is there any doubt in my mind?

Q. In accordance with the Commission definition which you read. A. In a general sense, I believe it is, sir.

[984]

Q. It says, "Agricultural (include here all programs containing farm or market reports or other information specifically addressed to the agricultural population)."

Isn't it correct, sir, that the program Best Buy of the Day is addressed to the housewives? A. It is addressed to housewives, yes; among them, I am sure are a great many of the wives of agricultural personnel.

Q. Is that your explanation, sir? A. Yes, sir.

Q. The program KRLA Farm Round-Up broadcast from, according

[984]

598

to the statement, 5:00 to 5:50, you testified that this program has been changed? A. The time has been changed.

Q. And it is now from 6:00 to 6:50, is that correct? A. That is correct.

Q. Now, can you tell me exactly when the hour of that program was changed? A. I can't tell you exactly, no, sir. It would be perhaps one month ago today.

Q. Is there some way, sir, that you can find out definitely when this program was switched? A. Yes.

MR. RAWSON: Mr. Examiner, I would like to have the record show definitely what is the date, because I would

[985]

like to determine just who the disc jockey was on the air on duty during this hour. A. I can tell you that, sir.

BY MR. RAWSON:

Q. Who was the disc jockey? A. Wing Martindale.

Q. Anyone else? A. No, sir.

Q. This program was never broadcast while Perry Allen was working with the station? A. Not from 6:00 to 6:50.

Q. Who broadcast the program when it was on from 5:00 to 5:50? A. Perry Allen.

Q. He broadcast the program from 5:00 to 5:50? A. a.m.

Q. For how long did he broadcast that program, do you recall? A. Since January 11, 1960.

Q. Since when? A. January 11, 1960.

Q. What hours was Perry Allen on, sir? A. He was on Tuesday through Saturday from 6:00 to 9:00 a.m., not on Sunday at all, and on Monday from 5:00 a.m. to 9:00 a.m.

[986]

Q. So that Perry Allen was the disc jockey since the inception of

this program? A. That is correct.

Q. Mr. Heiman, I show you an amendment dated February 15, 1960, which was received on that date in the Office of the Secretary of the Commission, contained in Docket No. 13622. This purports to be an amendment to the application for renewal of license of Station KRLA, File No. BR-1189. Can you tell me, sir, whether or not you prepared the programming data which is submitted along with that amendment?

A. What was the date of it?

Q. And in particular whether or not you prepared Part 5 thereof.

A. I did prepare Part 5. However, I don't recall preparing the specific analyses.

Q. You prepared Part 5, which is attached to that amendment of February 15th, is that correct, sir? A. Yes, sir.

Q. Now, according to part 5, the transcribed portions of this KRLA Farm Round-Up was to include comments by various people such as Dr. C. M. Hardin, president of the American Association of Land-Grant Colleges; Dr. J. W. Fitts, president, Soil Science Society of America.

Do you know, sir, whether or not these people ever

[987]

participated in this program? A. Their comments were on transcription.

Q. Is it your testimony that the comments of these gentlemen were transcribed by the station? A. No, sir. They were received by the station on a transcription.

Q. This is a service, a program which is distributed by the land grant colleges to all radio stations? A. No. I believe this was a transcription which includes various commentaries by reputable representatives of various agencies having directly to do with agriculture. I cannot at this time quote the source of the transcription.

Q. How about Dr. J. W. Fitts, president of the Soil Science

Society of America and Head of the Department of Soils, North Carolina State College? A. These gentlemen named are inclusive on the transcription.

Q. Had these programs been actually broadcast at the time Part 5 was submitted to the Commission? A. That was what, February 15th?

Q. Yes, sir. A. I can't remember if they were directly before or after.

Q. Well, did this exhibit purport to show the agricultural programs and the people who participated either

by way of tape or live on these programs prior to the time it was submitted to the Commission? A. Prior to the time?

Q. Yes, sir. A. I am not certain I understand.

Q. Before, at the time--does this exhibit purport to be, Part 5, purport to be a recapitulation of programs that had been broadcast by Station KRLA? A. From the date of January 11th, yes.

Q. And does this exhibit and the names of the people--were the particular comments which you have set out here, as far as Dr. Hardin and Dr. Fitts, Dr. Sprague, Carl E. Rose--did their comments appear on these programs or this program? A. To the best of my knowledge, they did, sir.

Q. Can you testify for a certainty? A. I did not hear them, no.

Q. Where did you get the information from which this part 5 was compiled? A. You mean the names and organizations? A. Yes, sir, and the programs. A. Well, from the transcriptions that were supplied us.

Q. Did you get them from the logs of the station, sir, the logs of KRLA?

A. No, sir.

Q. How did you determine, sir, that the tapes of these gentlemen had actually been played on this program? A. Well, if they had not, it certainly was the intention to follow through. I believe these are a representation of what this show intended to do. It certainly was not binding that these were to be only the people ever to appear or ever had appeared prior to that.

Q. Do you know whether or not the transcriptions of these people have been included in this show during this-- A. I believe I said to the best of my knowledge, I believe they had.

Q. Did you check with anyone to determine whether they had been played? A. I believe I discussed with Mr. Allen at the time. I don't think I made a specific point.

Q. Did you ask Mr. Allen whether or not these particular tapes had been played on his show? A. I told Mr. Allen to play these tapes, this transcription on his show.

Q. Did you give these instructions in writing? A. No, sir.

Q. Did you give them orally? A. Yes, I did.

Q. When did you give him these instructions?

[990]

A. Either during or just prior to the advent of this show, Farm Round-Up.

Q. Is this the type of information which has continually been broadcast on this program, Monday through Saturday, from 5:00 to 5:50 a.m.? A. We have attempted, sir, to give to the agricultural audience of this area the best information that we could supply them.

Q. Did you ever hear this program? A. No, I never did, sir.

Q. You never heard the program? A. No.

Q. Do you know what percentage of time is devoted to the broadcast of agricultural information or news or weather during this program?

A. I don't believe I could break it down as to percentages, no.

Q. Did you ever take a look at the log to determine the extent to which this program may actually carry news, weather reports and agricultural information? A. Yes, I have.

Q. What percentage of the time is devoted to music? A. Well, I can only relate the opposite end of the scale. On the log are reported and titled Special Report. And to the best of my recollection, there are three or four

[991]

each quarter hour.

Q. Three or four what? A. Special Reports.

Q. What length are these Special Reports? A. Of varying length, depending upon the information.

Q. Thirty seconds? A. Anywhere from two minutes to 30 seconds.

Q. Anything in excess of two minutes? A. I couldn't say, sir.

Q. Did you examine the log, sir, to determine this? A. I have examined logs, yes, sir.

Q. Did you examine the log to determine whether or not the majority of this program actually was music? A. I don't believe the log would reflect that, sir. The log would only indicate how many special reports there were each quarter hour.

Q. You claim a 50-minute agricultural program from 5:00 to 5:50; is that correct, sir? A. Yes, sir.

Q. How did you ascertain that this was properly identified as an agricultural program? A. First of all, in my conversations with Mr. Allen, he was made completely aware of what we wanted in the show. He was filled in. The newsmen were also filled in as to what information to supply the morning disc jockey with.

[992]

And I don't think it is a necessary prerequisite to air check every single

minute of every day to get a cross-section of what is being aired.

Q. What instructions did you give Mr. Allen? A. I told Mr. Allen what the format of the show was, that this was 50 minutes, that we are going to devote as much time as it took to transfer the information that would be necessary, vital, and which we had at our disposal to the agricultural audience at that time.

Q. What do you mean? Your instructions were to devote as much time as it took? A. If there were a hurricane which completely demolished southern California's crops and it took 15 minutes to give the information properly to this audience, it would take 15 minutes. If, for example, in the summer time there are no frost warnings, there is very little smudge information, why, it would take less time.

Q. Did you instruct Mr. Allen that he was not to play more than 40 minutes of music during this 50-minute period? A. No, I never instructed him in this policy at all.

Q. Did you have any kind of a schedule which would show times when he was to broadcast agricultural information, broadcast weather or to broadcast comments such as those which you mention here of Dr. C. M. Hardin, Dr. Fitts

[993]

and Dr. Sprague? A. At first, no. Mr. Allen would have to write in, in available slots what he actually broadcast. However, later we had these typed into the official logs so that they would be filled by the disc jockey on the board.

Q. You mean they were not prepared in advance? A. I don't believe you can prepare a great portion of agricultural information in advance.

Q. Isn't this supposed to be a 50-minute agricultural program, Mr. Heiman? A. Yes, it is, sir.

Q. Isn't the program supposed to be prepared in advance? A. I don't understand.

Q. Do you prepare programs in advance, sir? A. No, not all of them, no.

Q. Isn't this a disc jockey show? A. It is handled by a disc jockey on the board, yes.

Q. Isn't it a disc jockey show, as a matter of fact? A. It is an agricultural show, sir.

Q. Isn't it a fact that approximately 85 percent of the time during this 50-minute period is devoted to music?

MR. DOWD: Mr. Examiner, I suggest that Mr. Rawson is arguing with the witness. He is not asking questions.

PRESIDING EXAMINER: He is asking for a fact now. I

[994]

will overrule the objection. What about the 85 percent?

THE WITNESS: I don't know, Mr. Rawson.

BY MR. RAWSON:

Q. Well, if you don't know, could you please explain how you could classify this as an agricultural program. A. Well, I don't know what percentage per se is music. I don't say I don't know what I intend to have in the show or what directions were given to the disc jockey.

Q. If you don't know, sir, how much time was devoted to music during this 50-minute period, would you please explain how you were able to classify it as agricultural? A. According to the definition: "Agricultural (include here all programs containing farm or market reports or other information specifically addressed to the agricultural population)." This shows, this does exactly that, sir. Therefore, in my opinion, it is agriculture.

Q. Can you please state how much time? And I would like to know for the record, how much time on this program is actually devoted to the broadcast of music? A. I have said frequently, Mr. Rawson, I do not know what percentage.

Q. Did you ever make any attempt to determine the percentage?

A. I checked the logs, yes, sir.

Q. And when you checked the logs, what percentage did

[995]

you find? A. I find that agricultural information containing farm or market reports specifically addressed to the agricultural population is a basic factor in the show and is aired.

Q. Do you know how much time, what percentage of the 50 minutes is actually devoted to the broadcast of agricultural information? A. In seasons where necessary information must be given regardless of length of time, it will be given, sir. In seasons where very little information is available or necessary, it will be less information given. I cannot create a ratio or proportion which is unavailable.

Q. Isn't it a fact that on occasions when you examined the logs you had as little as five minutes of time devoted to these type of broadcasts, agricultural information? A. I cannot say, sir. No. When I have examined the logs, there has not been that little time.

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[1171]

November 9, 1960

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[1173]

WILLIAM J. WHEATLEY

was recalled as a witness, by and on behalf of the Broadcast Bureau and, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. COHEN:

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[1174]

606

[1174]

Q. Are you familiar with the programming of Station KRLA during the period of time covered by these logs? A. Yes.

Q. Will you please tell us what the programming consisted of from midnight to 3:59 on Tuesday, September 1? A. For the most part, it consisted of continuous clues given to the location of a \$50,000 Golden Key. It's entered as talk. And then there are two contest entries. Twice during each quarter hour the clues were interrupted at approximately four- or five-minute intervals with a contest from the five Greater Los Angeles Telephone Directories. Names were selected at random. We would announce this person's name and address on the air, giving that person ten seconds to call a certain number, the number at the radio station. If they called within ten seconds, they would receive \$100. And as I recall, if they called within one minute, they would receive \$50, and if they called within three minutes, they would receive \$25.

Two of those contests were scheduled in each quarter hour, and they took approximately one minute each. The other time was consumed with the repetitious clues to the location of the \$50,000 Golden Key, which is--several instances is listed as talk on this schedule.

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[1177]

Q. Mr. Wheatley, will you please explain the logs commencing at 6:00 a.m., Thursday, September 3, 1959 from 6:00 until 7:44 a.m.?

A. This is the log which reflects the operation beginning at 6:00 a.m. The Perry Allen show began at 6:00 a.m. This is a disc jockey type show. Included within the various quarter hours of each show are two contest promotions. One of them is the telephone promotion which I mentioned earlier, during which a name was called at random and the person was given ten seconds to call for \$100. The second one was a clue to the location of the \$50,000 Golden Key.

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[1182]

Q. Mr. Wheatley, are you familiar with the Golden Key contest which was broadcast over KRLA and has been testified to in this proceeding? A. Yes.

Q. What do you know--strike that.

From whom did you gain this familiarity about the Golden Key contest at the period of time it was broadcast? A. Mr. Jack Cooke.

Q. What did he tell you about the Golden Key contest prior to the time it was broadcast? A. That it appeared we were not going to receive permission from the Commission to operate with our 50,000 transmitter as originally planned, or as planned at this moment, and that we needed some sort of contest or sustaining action or--contest or sustaining action until such time as permission was granted to go to 50,000 watts.

Mr. Jack Cooke conceived the idea for a Golden Key which would be--theoretically, which would unlock the transmitter which would turn on the 50,000 watts of power.

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[1191]

CROSS-EXAMINATION**BY MR. DOWD:**

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[1193]

Q. Well, would it not normally be the function of the program director to see that logs were properly maintained in accordance with the Commission's rules and regulations? A. Yes.

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[1204]

REDIRECT EXAMINATION

BY MR. COHEN:

Q. I have not had a chance to have your statement read back, Mr. Wheatley, but is it my understanding that you stated that the clues on Applicant's Exhibit No. 28 were broadcast for the first time on September 7th? Is that correct, sir? A. Yes.

Q. Do you know on what date the key was found? A. On the 7th, I think.

Q. Mr. Wheatley, do you know during what period of time the clues on Broadcast Bureau Exhibit No. 1 were broadcast?

[1205]

A. These clues were broadcast from the inception of the contest. I don't recall the exact day. It seems like it was towards the last of August or around the first of September. These clues were broadcast up until the morning of September 7th when we started using the other set of clues.

Q. I call your attention to the last three clues. The last testimony you gave, does that apply to all of these clues? A. Obviously on page 4, the fifth paragraph, that clue concerns the time, or the time that this clue was given was when the Golden Key had been reduced in value to \$40,000. Exactly when it was reduced to \$40,000, I do not know, but it was at that time.

And then on page 5, the only clue listed on that page, that clue was given when the value of the key was \$20,000. Now, as I understand, or as I recall, the other set of clues, the first one is for \$20,000. So these clues were worth the same, and this clue was given before this one that after 8:00 a.m. on Monday, the 7th of September, these were the clues which were given. Prior to that day and that time, these were the clues which were given.

MR. DOWD: By "these" and "those," what does he mean?

BY MR. COHEN:

Q. Do you mean all of the clues in Broadcast Exhibit No. 1?

A. At least that many.

[1206]

Q. Mr. Wheatley, did you know prior to September 7th of your own knowledge, from the period of time to the 7th were you ever informed as to when the key was supposed to be found? A. Yes, I think so. Yes. I will amend my answer. Yes.

Q. When was the key to be found, sir, and who told you it was to be found? A. Jack Cooke told me it was to be found on Labor Day.

Q. When were you told this? A. Sometime prior to Labor Day. I don't know exactly the day.

Q. Do you know if it was approximately two or three days before-- you have no recollection--

MR. DOWD: I object to the question. I believe that the question, and Mr. Cohen knows, that the question is leading for a specific purpose, and therefore I think it is improper. The witness has stated that he doesn't recall.

PRESIDING EXAMINER: I will sustain the objection to the form of the question.

BY MR. COHEN:

Q. Mr. Wheatley, do you have any recollection whatsoever, sir, in terms of days before September 7th when you were informed that the key was to be found? A. It was after I had been told where the key was hidden and before Monday morning at 8:00 o'clock.

[1207]

Q. Now, when you say Monday morning, what date do you mean by Monday morning? A. Monday morning, September 7th at 8:00 a.m.

Q. When were you told, sir, that the key was hidden? A. I think I was told on September 5th where the key was hidden.

Q. Who told you this? A. Jack Cooke. No, a third party, in the presence of Jack Cooke.

Q. Do you know who that third party was? A. I don't remember. Frank something or other. I don't remember his last name.

MR. DOWD: I think the record shows, sir, that there was a Frank Loy involved.

THE WITNESS: Frank Loy.

MR. COHEN: I have no further questions, Mr. Examiner.

RECROSS-EXAMINATION

BY MR. DOWD:

Q. As I understand your testimony now, Mr. Wheatley, you have previously stated that the last three clues on FCC Exhibit 1 were prepared by you after you had specific knowledge as to the whereabouts of the key. A. Yes.

Q. And that includes the one that you have said was broadcast with the \$40,000?

[1208]

A. Yes.

Q. Now, is it not true, sir, that each of the key clues which were broadcast on Monday, beginning on Monday, and shown in Applicant's Exhibit 27 were written with the specific knowledge which you had as to the location of the key? A. I knew where the key was hidden when these were written, yes.

Q. And in your opinion, did each of these clues give definite indications or definite clues as to the key's location? A. Yes.

Q. Would it not therefore have been possible for someone to have determined the location of the key upon the basis of the clue which was broadcast at 8:00 o'clock on Monday? A. It is possible, yes.

Q. And if that had been done, it was announced that \$20,000 would be paid? A. Yes, sir.

Q. Now, when you stated that Jack Kent Cooke told you that the key was to be found on Monday, did he also indicate that you were to write clues which would make certain that the key was to be found on

Monday? A. There was no way that we could be certain that the

[1209]

key would be found. I was to write clues that were so leading that it was hoped that it would be very obvious to the listener where the key was hidden and that it would be found.

Q. And if possible, this was to be accomplished on Monday?

A. Yes.

MR. DOWD: I have no further questions.

PRESIDING EXAMINER: If you gentlemen have no objection, I would like to ask the witness if he will give us his best recollection of the conversation which you have just testified to a moment ago in answer to Mr. Dowd's question, that a Frank something told you in the presence of Mr. Jack Cooke that the key would be found on Monday. What led to that conversation? What did Frank Loy say? What did Mr. Jack Cooke say? And what did you say? According to your best recollection.

THE WITNESS: May I suggest, sir, that that was not the conversation during which I was told that the key, we hoped, would be found on Monday. The conversation with Mr. Loy and Mr. Jack Cooke and myself pertained only to the location of the key.

PRESIDING EXAMINER: I see. Now, I think you are saying something now about it was hoped the key would be found Monday. I think originally you stated that you were informed by Frank Loy it would be found on Monday.

[1210]

I'd like to get that straight, if you don't mind.

THE WITNESS: I was told by Jack Cooke. And if I may, in essence, he said: "We have got to give this key away. The key has got to be found on Monday. This is a holiday." And the key was hidden, as I learned from Mr. Loy, near Marineland of the Pacific, which is a very

[1210]

612

popular recreation spot. And Labor Day, it was known that there would be many thousands of people here.

The idea was that the key, that Jack wanted the key found on Monday because all of these people would be at Marineland, and the key was hidden just across a four-lane road from Marineland.

Now, relative to the conversation that took place between Jack Cooke and Frank Loy and myself, Jack and Frank were in a room with a large map. Jack called me into the room and said: "Bill, I think it's time that you knew where the key was hidden." And I don't recall that I answered. I just walked into the room. And he closed the door, Jack closed the door. Jack introduced me then to this Frank Loy and said that: "He has hidden the key. Frank, tell Bill where you have hidden the key."

And Frank, with a pencil, and the map laid out, pointed to the spot on the map where he had hidden the key. And I asked Frank at this time: "Are there any identifiable marks where it is?" And he said: "It's near Marineland."

[1211]

Then he gave me some other, told me some other things that were clues to the location of where the key was. It was near three threes, I think, or 14 steps due west of the center tree, or something, I don't recall specifically.

PRESIDING EXAMINER: This was Frank Loy?

THE WITNESS: Frank Loy telling me this. And that it was from this information then that I began to write those clues which would be used beginning at 8:00 o'clock on Monday morning.

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[1213]

CECIL GOODWIN,

a witness appearing for and on behalf of the Broadcast Bureau, having

first been duly sworn, was examined and testified as follows:

[1214]

DIRECT EXAMINATION

BY MR. COHEN:

Q. Will you state your name and address, sir. A. My name is Cecil Goodwin, 20323 Canterra, Canoga Park.

Q. At any time have you been employed by Eleven Ten Broadcasting Corporation? A. I have, sir.

Q. Are you appearing by subpoena of the Federal Communications Commission? A. That is correct.

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[1217]

Q. Mr. Goodwin, do you recall anything else that Jack Cooke told you that you haven't told us just now at the meeting when he asked you to listen to the tapes.

A. Aside from the fact that he told me that I was to do the Perry Allen show and that I was to listen to the tapes and to acquaint myself with the tapes so that I would be familiar with them, they were to be used on the air the following morning, which was the 6:00 to 9:00 a.m. slot that Perry Allen was to be scheduled, so that I would be familiar with them so that I could expound or further amplify on the tapes on the air during the program--other than that, sir, I don't recall anything else.

Q. Do you recall, sir, what the further amplification which you just described was to be? A. To more or less amplify what Perry Allen had said in the tapes, to go out, to walk up to people, if they have a checkered coat on, checkered tie, checkered hat, whatever their clothing, different people, but everyone they see, man and woman alike, possibly in costume, whatever it may be in the streets of LA, or wherever they go, ask "if you are KRLA's Perry Allen."

[1220]

614

[1220]

Q. On the morning of September 3rd, did you broadcast what was called the Perry Allen Show? A. I did.

Q. At that time, sir, did you broadcast any of the tapes which you heard the previous day in Jack Cooke's office? A. That is right, I did.

* * * *

[1221]

Q. At this time on the broadcast of September 3rd, did you amplify these tapes? A. I did.

Q. Who directed you to amplify the tapes? A. Jack Cooke.

Q. Can you recall, sir, the substance of the amplification?

A. The substance being that I was to inform the listeners to go out on the streets, "wherever you may be, and that everyone you see, ask if he is the KRLA Perry Allen. And if so, you would win the amount of money, \$10,000 that it was to be that day, which was the first day of the Perry Allen Contest."

* * * *

[1248]

PERRY ALLEN GERSTEIN

a witness called by and on behalf of the Broadcast Bureau, having first been duly sworn, was examined and testified as follows:

* * * *

[1251]

DIRECT EXAMINATION

BY MR. RAWSON:

Q. Would you state your name and address and occupation for the record, please. A. Perry Allen Gerstein, 3346 Griffith Park Boulevard,

Apartment 14, Los Angeles 27. Radio announcer.

Q. And are you a disc jockey? A. Yes.

* * * *

Q. Where were you employed prior to your employment with your existing station?

* * * *

[1252]

A. Slightly over a year.

Q. Do you recall who it was that employed you on behalf of Station KRLA? A. I was hired on a verbal agreement with Mr. Jack Cooke.

Q. Did you ultimately sign a written agreement? A. Yes, I did.

* * * *

[1253]

Q. Well, could you tell me approximately how you were contacted by Mr. Jack Kent Cooke the first time? A. I was in the employment at the time of Radio Station WKBW in Buffalo, New York. I received a telephone call from him in Buffalo.

Q. Do you recall when you received the telephone conversation?

A. This would be the last week of August, to the best of my recollection.

Q. Can you, to the best of your recollection, sir, state what Jack Cooke stated to you? A. He stated that he was interested in hiring me for

[1254]

the position of morning disc jockey on KRLA and said that he had heard a tape of mine; although the quality wasn't exactly what he had in mind, he liked the tape, the feeling of it, and could I be there by the week end.

* * * *

[1255]

616

[1255]

Q. Now, we were at the point, I believe, where you were to tell me what Jack Cooke said to you. A. He had asked me if I would be interested in working for KRLA. He was looking for a morning disc jockey, and indicated that they had a kick-off date for a new station formula that was to go into effect, I believe--I'm not certain on the date --the first of September.

Q. What did you say to him?

[1256]

A. I was very excited and my reaction was one of great excitement. I said I would like to try; however, I, at that time was under a contract to Radio Station WKBW in New York and could not commit myself.

* * * * *

Q. As a result of that, did you contact the management of WKBW?

A. I did.

Q And what did they tell you, sir? A. They said that they would not release me from the contract until they had found a replacement for me at that station.

* * * * *

[1261]

A. * * * * *

[1262]

* * * We talked to Jack Cooke--my wife talked to Jack Cooke, told him that we could not accept the job, it would be impossible for us to get to Los Angeles in time for the kickoff of the new formula of the station.

* * * * *

A. * * * He had said: When could you be here at the earliest?

[1263]

We then projected a date, which would be two weeks hence from this phone call, and it was the 12th of September; this would be the time that we would be able to leave Buffalo legally with a release.

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Q. * * * * A. He said that we had an agreement definitely, that in view of the fact that I would be late, or the rest of the station would be in motion before I got there, that we would have to have some sort of a promotion centering around me to draw attention to me.

Q. What else did he say; is that all he said to you? A. No. He outlined a promotion which would have me crossing the country, giving clues as to the spot where I was on the map, and people were to guess this.

He then corrected himself and said: No, I have a better idea. We'll have a Find Perry Allen contest where--and he went on to elaborate on the contest.

And I took a fact sheet from this. He told me--

[1264]

Q. What was his elaboration on the contest? A. Well, first of all, he said: We'll start it with \$10,000, the prize in the contest will be \$10,000, and listeners will be invited to walk up to you and say--and I can't quote this verbatim: Are you Perry Allen, the latest member of KRLA, Eleven Ten--words to this effect.

He said they would decrease it by \$1,000 every day and we would give clues, he said. He asked me about myself--we had never met--and I said: I'm short.

He said: Do you have any other characteristics which would be definitive in a crowd?

And I said: Well, I wear a bow tie quite frequently and a grey suit. And he said: O. K., "Look for the guy in the bow tie," and then cited--he said: You might say: In the Los Angeles restaurant, and if you walk up to the right person and ask this question, which I had stated previously, you'll win the money.

I was to cut twelve announcements per day, decreasing by \$1,000 every day.

Q. Now, what did you say at this point to Mr. Cooke, Jack Cooke?

A. I read back my fact sheet which I had jotted down briefly to make sure that I had it correctly, and I said that I would have a tape containing the announcements as he

[1265]

requested in the mail, air mail-special delivery, that evening.

Q. Now, did you then prepare these tapes? A. I did, that same evening.

Q. Do you recall, was your wife present when you prepared these tapes? A. Some of the tapes. I don't recall whether she was present at all of the sessions.

I believe, as I recall, I had three different evenings of recording for three different days of--broadcast days. I know my wife was present at some of these occasions. Whether or not she was present the first night I don't recall.

Q. Now, how many tapes did you send off the first evening, if you know? A. There was one reel of tape containing twelve announcements.

Q. You sent those to KRLA? A. Yes.

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[1266]

Q. When was the next time you had a telephone conversation with Mr. Jack Cooke? A. Well, this would be on, I believe it's September

4th when the two gentlemen from Crowell-Collier found me at WKBW.

Q. How is it that you can recall the date of September 4th, Mr. Allen? A. Well, this was a very hectic day for me. We were in the process of getting ready to leave Buffalo. We had our hopes built up in anticipation of coming to California and I saw them shattering all at once; and it stands out. Plus the fact that, since this hearing has come into being, I've read a lot of material about it, and I have seen the dates in the trade publications which indicate the time, the date that the two gentlemen found me.

Q. And what did you do after they found you? A. Well, the first thing I did, I was still on the air at the time--this was during a newscast. I completed my show.

[1267]

They took some pictures. I immediately went into an office, attempted to call Jack Cooke. I couldn't reach anybody at KRLA at that time, which would have been at about 9:00 o'clock in the morning, Buffalo time. I got no answer.

Ultimately, I did get in contact with Mr. Cooke, which was, I imagine, about noon in Buffalo. It was a three-hour time difference someplace.

Q. And you say you finally reached Jack Cooke? A. Yes.

Q. And what did you say to Mr. Cooke? A. I said: Jack, I don't know how to tell you this, but I've been found.

Q. What did he say to you? A. He said: What do you mean? And I said: Well, there are two gentlemen--I didn't know they were affiliated with Crowell-Collier at the time. I said: There are two gentlemen out here from Los Angeles. They walked in and had properly given the slogan and they're waiting for their money. I want to know what to do.

Q. What did he say? A. He said: Perry, Good God, do you know how much \$10,000 is?

Q. What else did he say, if you can recall? A. He said: I'll talk

[1267]

620

to you later. Wait. I instructed the two gentlemen to talk to Mr. Cooke.
I

[1268]

tried to get out of the center of this as much as possible. I didn't know what answers to give.

Q. After the two gentlemen talked--did the two gentlemen talk with Mr. Cooke? A. I really can't say. I would imagine they did, because they used our office phone, but I didn't stay in the office while they actually made the call.

Q. Did you have another telephone conversation with Jack Cooke after these gentlemen found you? A. Yes, I did.

Q. And when was that, if you can recall? A. Well, it was later that same day. As for the time of day, I'm not certain, but it was later that same day.

Q. And what did Jack Cooke say to you? A. He said: It's unfortunate that it happened this way, but I think possibly we can turn this to our promotional advantage.

He asked me then if I had any contacts on the East Coast in the news disseminating services.

I said I would try to find somebody. And he said: This might possibly prove to be worth the money that--in view of the fact that this had happened.

* * * *

[1271]

MR. RAWSON: I want to show the witness, Your Honor, a copy, Part 5, which was submitted as an amendment to KRLA's renewal of license. Your Honor incorporated it by reference. It is an amendment which was received in the offices of the Secretary of the Commission on February 15, 1960.

* * * *

BY MR. RAWSON:

Q. I just want you to look at Part 5, just the first page of Part 5, where it talks about KRLA agricultural

[1272]

programming and the KRLA Farm Roundup.

(Witness reads document.)

BY MR. RAWSON:

Q. Are you familiar with that program, Mr. Allen? A. The Farm Roundup on Monday mornings, yes, sir.

Q. Is that the program you conduct from 5:00 to 5:50 on Monday morning? A. Yes, sir.

Q. Do you know whether you broadcast, or you covered that program in January and February of 1960? A. I don't recall being absent during those times.

Q. Did you ever have any instructions from Mr. Heiman concerning the manner in which this program was to be conducted? A. I did.

Q. Is this a disc jockey show, Mr. Allen? A. I'm not clear on your definition of what a disc jockey show is.

Q. Was this show any different--excuse me. Was this particular hour any different in any significant respects from the other hours of your show? A. It was non-commercial and it contained bits of agricultural information which wouldn't be run during a normal record program.

Q. Now, I did ask you whether you had ever received

[1273]

instructions from Mr. Heiman as to-- A. Yes, I did.

Q. You did? Now, can you tell me what those instructions were? A. Well, at the outset, the first thing was to--we started out on a basis where the newsman would tape record the inserts to be used in the program, and we found that this was not really practical but unnecessary,

because I could do the same thing live while I was there. I was told to run these inserts at the outset, the taped inserts; then, later, to do them live and to play music.

Q. Now, what were these taped inserts that you are talking about; what did they consist of? A. I would say--I was never present at a recording session when these tapes were made, but I would say it was in essence the same material that's on the wire service pertaining to agricultural occurrences.

Q. Well, did you ever hear the news that was broadcast on your show? A. Oh, yes.

Q. Well, was this simply agricultural news or was it agricultural news? A. Yes, it was agricultural.

Q. Were you directed to play any special tapes on this show that might have been prepared by such eminent people as

Hardin, President of the American Association of Land Grant Colleges and State Universities and Chancellor of the University of Nebraska?

A. I can say this, that they were not played, and I don't recall being told--however, if I might?

Q. Sure. A. Mr. Heiman on several occasions gave me discs, transcribed spots of varying lengths, and said: Do you think these things would be applicable or usable on the program? In no case did I use them, but they were presented to me.

Q. Did you ever broadcast them? A. No.

Q. Do you ever recall broadcasting any tapes prepared by any of the individuals listed on Part 5 of the amendment to which I am referring?

A. No, I don't.

Q. Now, Mr. Allen, can you testify as to the length, if you know--only if you know, sir--the length of the taped information or the length of the news broadcasts made live by you on this show? A. Well, they would vary so radically; some would go up to three minutes, some would

be 30 seconds in length.

Q. Now, during a 15-minute segment, can you recall the amount of time that would be devoted to music? A. This would only be an estimate on my part. I

[1275]

scheduled three inserts per quarter hour, as a general rule. And on an average, these were regular news items from the ticker machine. I would say that there would be three of them per quarter hour, which would be about three minutes worth of farm information; possibly more. It would vary.

Q. And was the music that you played during this hour different in any significant sense from the music that you played during your other hours? A. No.

* * * *

CROSS-EXAMINATION

BY MR. DOWD:

Q. When you stated that these inserts in the Farm Roundup consisted of regular news items, did you mean by that that this was information taken from a news service?

[1276]

A. I would draw this assumption. During the time that I was doing the inserts live this is what they were. When they were tape recorded at the outset of the program, or when the program was initially put on the air, I don't know what the sources were. They sounded like to me--

Q. No, when you were responsible-- A. Yes.

Q. --this was agricultural information taken from the news services, is that it? A. Yes.

Q. Is it true, Mr. Allen, that during this one-hour that, in addition to the fact that commercial announcements were not included, that station

[1276]

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promotional material was also excluded during this hour? A. I don't recall any station promotional material ever being included.

Q. And station promotional material is normally included in your other-- A. Yes.

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[1300]

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

December 22, 1960

In the Matter of:

Eleven Ten Broadcasting Corporation,
Pasadena, California

) DOCKET NO. 13622 &
) DOCKET NO. 13623
)

The above-entitled matter came on for further hearing before James D. Cunningham (The Presiding Examiner) in Room 1346 New Post Office Building, Washington, D. C. at 2:00 p.m.

APPEARANCES:

(As heretofore noted.)

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[1305]

MR. DOWD: Mr. Examiner, during the course of the hearing in Los Angeles, reference was made to the fact that there were a number of other letters to or from Donald Cooke, Ed Schultz and Herb Hyman-- during the same period of time that is covered

[1306]

by the exhibits 17, 18, and 19. And that all of the letters between those parties that we have in our possession were turned over to the commission counsel for their inspection, and for those they selected certain letters

which were introduced as their exhibits.

There are and were a number of such letters which were not introduced into evidence, comprising some 67 in number, between these, additional letters. As I stated, all of those letters have been made available to the commission counsel for their examination and inspection.

I would now like to request that it be stipulated that during the same period of time that there were, in addition to the letters that have been received in evidence, 67 letters between these same individuals concerning matters involved in the operation of KXLA.

PRESIDING EXAMINER: Agreeable, Mr. Rawson?

MR. RAWSON: Mr. Examiner, I thought the purpose of this further hearing in Washington was restricted to the testimony to be given by the Cookes. As a matter of fact, the record may not so reflect, because it is possible this might have been done on an informal discussion with the examiner. If Mr. Dowd can refer me to the record on this, certainly I will be willing to abide by whatever agreement we had reached earlier.

PRESIDING EXAMINER: That is my recollection, Mr. Rawson-- that we would confine ourselves to the testimony of the two

[1307]

Cookes. However, this seems like such a harmless thing--if in fact the correspondence was made available to the commission's investigators prior to the hearing--if that be the case, it might be stipulated to.

MR. DOWD: If you wish to take a few moments, I will find reference in the record where it was stated that I would either wish to introduce the letters physically when Donald Cooke was present to identify them, and now it just seems to me that rather than taking advantage of that reservation, I would merely ask that it be stipulated that these letters--that there were the 67 additional letters. However, if there is some question about it, I would then ask to fall back on the reservation which I made on the record.

PRESIDING EXAMINER: What you are asking, Mr. Dowd, is for a stipulation as to whether, in connection with the investigation, the 67 letters were made available to representatives of the commission, is that correct?

MR. DOWD: I am asking for a stipulation that in addition to the letters between these individuals which were introduced into the record, both by the Broadcast Bureau and by the applicant, that there were in addition 67 other letters concerning the operation of the station which were also made available to the commission for their examination.

MR. RAWSON: These are letters of course which are not to be offered in evidence.

[1308]

PRESIDING EXAMINER: That is right.

MR. DOWD: That is in lieu of offering them in evidence--I merely ask for a stipulation that there was this additional correspondence.

MR. RAWSON: Mr. Dowd, I presume--if he finds the reference, I will consider the matter further.

MR. DOWD: Page 1079 of the record, in which it says--I am speaking now--"It may be our desire to offer all of those or at least some of them in agreement with commission counsel. And it has been agreed that if that is done, they would be admitted under a stipulation that if Mr. Donald Cooke were present, that he would state these are true and correct copies of letters written by him or received by him in the same manner that he had identified previous exhibits." And Mr. Rawson said, "Yes, sir, with one exception. Some of the material did not actually involved letters to them from Donald Cooke, but involved interoffice memorandums or instructions that were not sent to Donald Cooke." And those matters to which Mr. Rawson has excepted, in that reservation, have been eliminated before we made the count of the 67. And then the Presiding Examiner said, "Well, perhaps we had better

wait until they are actually introduced" and I am now, as I said--This was on November 8. And that was carried over. I believe that this offer now for an incorporation is in accordance with that reservation.

MR. RAWSON: Well, now, Mr. Examiner, I have to disagree

[1309]

with Mr. Dowd. We were talking then about the hearing itself in Los Angeles. We were not talking about a further hearing in Washington, D. C. It was my understanding, and I clearly recollect, that this occurred after Mr. Donald Cooke left the witness stand and returned. The problem developed, and I was willing at that time, when they were offered, to enter into a stipulation to have them received without being identified by Donald Cooke. But that does not relate at all to any hearing to be held in Washington, D. C. The letters, if you will recall, at that time, being in Los Angeles, were available to us and we could consult with the people to whom the letters were addressed, or with the people who had written any letters to Donald Cooke. It was not my intention at all at any further hearing in Washington to get into this entire area of additional letters.

PRESIDING EXAMINER: It seems to me what counsel is asking is simply that the letters--and they have absolutely no evidentiary value at all--I have no idea what they are, nor does the record--were available or made available for inspection by commission representatives.

MR. RAWSON: Mr. Examiner--

PRESIDING EXAMINER: It seems to me, Mr. Rawson, if they were--of course you stipulate as you like--I think we might indicate that.

MR. RAWSON: Mr. Examiner, I will stipulate to the fact

[1310]

that he gave me 67 letters that were from Donald Cooke to other--to employees of the station, and if the letters were written from Donald

Cooke or employees from the station to Donald Cooke. But I cannot stipulate that these letters related to the operation of the station. There was quite a distinction between what you say and the stipulation offered by Mr. Dowd--a very significant line of demarcation. I would like to hear from Mr. Dowd--as to--I would be willing to stipulate to the statement of the examiner, but I would not be willing to stipulate to the statement of Mr. Dowd. As a matter of fact, they both exceed the understanding as to what this further hearing here in Washington was to be all about.

MR. DOWD: If Mr. Rawson wishes to be technical as to what was agreed upon, I ask him now to refer to the record and tell me where it is reflected in the record as to the exact limitations of the hearings in Washington.

MR. RAWSON: Mr. Dowd; this was an understanding reached between you and I and the examiner at the bench.

MR. DOWD: Well, I think Mr. Rawson is being exceedingly technical now. I do not admit that he is technically correct. But if he wishes to be technical, then I would refer to the record and say there is no such limitation in the record.

PRESIDING EXAMINER: Now, gentlemen, apparently counsel for the Bureau is not willing to stipulate. I assume that counsel for the applicant would like to go forward and have

them established. The only question now is whether it was the intention, when we adjourned in Los Angeles, to take up this sort of thing when we got to Washington.

MR. DOWD: Mr. Examiner, I am not trying now to introduce any line of examination as to exactly what was contained in the letters. I think, however, that it is the most extreme stretch of imagination to contend that any of these letters concern themselves with anything except matters involving the operation of KXLA.

PRESIDING EXAMINER: Well, personally--

MR. RAWSON: I will give you the very first letter, Mr. Examiner; this was a letter from Mr. Schultz to Ed. "Dear Ed, Lillian expects to be someplace in October. You will be able to reach"--I would just like to show this to the examiner. There is no sense in reading this into the record.

Mr. Examiner, your recollection--I would so rely upon your recollection on the purpose of this further hearing. I do not want to be technical or anything else, but we reached an agreement off the record in this proceeding. My recollection, of course, is quite clear that we were only to go into this further hearing to bring Jack Cooke here and Donald Cooke for the purpose of testifying concerning Broadcast Bureau Exhibits No. 12, 14, 16, 11 and 13, and that was the extent of the agreement.

PRESIDING EXAMINER: What is your plan, Mr. Dowd, in the

[1312]

event counsel--or since counsel refuses to stipulate?

MR. DOWD: Well, since counsel has refused to stipulate as to the fact that the letters concern or involve the matters of operating KXLA, but has indicated to the examiner that there were these additional letters between employees of the station and Donald Cooke which were made available for the examination, and since, as I have stated, I have no wish to get into the content of them except for the general matter, if Mr. Donald Cooke were called back to the stand, the only thing I would ask him is whether he ever wrote to members of the station except on matters which in his opinion involve the operation of the station--that would be the only question that I would ask; and whether the correspondence which we have now requested a stipulation on was written by him in the course as a part of his exercising managerial supervisory control of the operation.

PRESIDING EXAMINER: What do you say, Mr. Rawson?

MR. RAWSON: Mr. Examiner, it seems to me it is quite obvious that we are now opening up an entirely new area. Here to fore I did not raise any objections as to letters as far as or complication was concerned--of letters that might have been written by individuals to Mr. Donald Cooke who did not appear and testify. I could go through each one of these and I could object to each one on the basis that there can be no proper identification, not only of these letters, but of most letters which have been received in evidence, other than those letters

[1313]

that were written by the witness himself.

Now, I do not quite understand why we are opening up the hearing beyond what was contemplated when we recessed in Los Angeles.

PRESIDING EXAMINER: What is your offer of proof, Mr. Dowd?

MR. DOWD: It is the statement that I made. And I assume, then, that this is the--the offer of proof is in addition to the fact that Mr. Rawson--maybe it is not--I assume this offer of proof is in addition to the tendered stipulation that there were the 67 letters which were made available for examination.

PRESIDING EXAMINER: Very well, sir. The record will show that.

MR. RAWSON: Mr. Examiner, I will stipulate that 67 letters were offered to me for examination at a late date, midnight, on a Sunday evening, at 10 minutes past twelve. I will stipulate to that.

MR. DOWD: What date?

MR. RAWSON: November 6--that 67 letters were offered to me for examination.

PRESIDING EXAMINER: I think the position of you two gentlemen is clear on the record now. I don't think the door could be open at this time, Mr. Dowd, to a comprehensive showing, through Mr. Cooke, Donald Cooke, with regard to these 67 letters, in view of the understanding

we have when we left Los Angeles. So your tender of proof, your offer, I think, is clear on the

[1314]

record. Your proposal for a stipulation as set forth, which has been rejected by counsel. I think we might proceed from there.

MR. DOWD: I have nothing further.

PRESIDING EXAMINER: Mr. Rawson, do you have anything in the way of rebuttal?

MR. RAWSON: No, Mr. Examiner. * * * *

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Eleven Ten Broadcasting Corporation)	
)	
Appellant)	
)	
v.	)	No. 17, 240
)	
Federal Communications Commission)	
)	
Appellee)	

PREHEARING STIPULATION

- I. Counsel for Appellant and Appellee stipulate and agree that the following issues are presented in the above-entitled case:
1. Whether the Commission's findings can be ascertained only by reference to the Initial Decision, the Exceptions, the Final Decision, and Rulings on the Exceptions, and, if so, whether the findings are in such form and so unclear and imprecise as (a) not to constitute findings made by the Commission, and (b) to preclude proper judicial review of the Decision.
 2. Whether the Commission decided issues adversely to Appellant without affording the latter proper and adequate notice and opportunity to be heard on those issues and, if so, whether Appellant was denied a fair hearing in accordance with constitutional and statutory requirements.
 3. Whether the Commission's Decision denying a renewal of Appellant's license to operate station KRLA is arbitrary and erroneous in that (a) its findings are unsupported by substantial evidence in the record considered as a whole, and (b) its conclusions do not flow logically from the findings.

4. Whether, in denying renewal of Appellant's license to operate station KRLA, the Commission failed to consider or make findings and conclusions with respect to substantial evidence (either in the record or improperly rejected when proffered) which is relevant and material to the discharge of the Commission's responsibility to determine whether the public interest, convenience or necessity would be served by continued operation of KRLA - including, particularly, evidence designed to show that KRLA presented meritorious programming and that it rendered a needed and desired service to its community; and, if so, whether the Commission thereby failed to comply with the requirements of the Communications Act of 1934, as amended, and Sections 7 and 8 of the Administrative Procedure Act.
5. Whether the Commission's conclusion that Appellant's president was guilty of efforts to deceive the Commission is unsupported by the record and is arbitrary and capricious, and, if so, whether in making that conclusion a principal basis for its decision to deny renewal of Appellant's license to operate KRLA, the Commission committed reversible error.
6. Whether the Commission's action in denying renewal of Appellant's license in the particular circumstances presented in this case was drastic and represented a significant decisional departure from policies and decisions of the Commission in similar cases, and, if so, whether the extent thereof could and did render it arbitrary and capricious; discriminatory against Appellant; a denial of due process to Appellant; and tantamount to a revocation of license without affording Appellant the procedural safeguards provided in the Communications Act of 1934, as amended, and the Administrative Procedure Act.

- II. Counsel for parties stipulate and agree that Appellant will file its brief on or before January 28, 1963; Appellee will file its brief on or before February 28, 1963. Appellant's reply brief, if any, and Joint Appendix will be filed on or before March 15, 1963.
- III. References to the record appearing in the various briefs of the parties may be to the page numbers of the record certified to the Court. In the printing of the Joint Appendix, there will be set forth, in addition to the consecutive numbering of the pages of the Joint Appendix, the original record page numbers in bold type and indented in a manner which will render it convenient for the Court to locate the pages referred to in the briefs. The notice of appeal need not be printed in its entirety in the Joint Appendix.

Respectfully submitted,

/s/ Harold David Cohen
Pierson, Ball & Dowd
1000 Ring Building
Washington 6, D. C.
Counsel for Appellant

/s/ Daniel H. Ohlbaum
Assistant General Counsel
Federal Communications Comm.
Counsel for Appellee

December 4, 1962

Before: Washington, Circuit Judge
in Chambers.

ORDER

It is ORDERED that the prehearing conference in the above-entitled case is hereby dispensed with, and the schedule for filing the briefs and joint appendix of the parties herein is hereby fixed as follows:

Appellants' brief shall be filed on or before January 28, 1963.

Appellee's brief shall be filed on or before February 28, 1963.

Appellants' reply brief, if any, and the joint appendix of the parties shall be filed on or before March 15, 1963.

and it is

FURTHER ORDERED that counsel for appellants shall serve upon appellee and file with the court, on or before December 17, 1962, a statement of the issues as he sees them, and counsel for appellee shall serve upon appellants and file with the court, within 10 days thereafter, a statement of the issues as he sees them.

No extensions of time for filing appellants' briefs will be granted except upon extraordinary and unforeseeable cause shown.

Dated: December 7, 1962

Before: Washington, Circuit Judge,
in Chambers.

ORDER

Counsel for the parties in the above-entitled case having submitted their prehearing stipulation pursuant to Rule 38(k) of the General Rules of this Court, and the stipulation having been considered, the stipulation is hereby approved, and it is

ORDERED that the stipulation shall control further proceedings in this case unless modified by further order of this court, and that the stipulation and this order shall be printed in the joint appendix of the parties herein.

Dated: 12/10/62

17,239

APPELLANTS' STATEMENT OF ISSUES

I. Pursuant to the order of this Court, appellants specify the following issues in the above-entitled cause:

1. Did the Commission in promulgating its Order directed against appellants fail to make proper findings of fact and conclusions of law as well as the reasons or basis thereof required by the Communications Act of 1934, as amended, and Sections 7 and 8 of the Administrative Procedure Act; (a) on all of the material issues tendered by appellants' pleadings and evidence; (b) on appellants regularly scheduled weekly program service and the impact and effect of the elimination of KRLA upon that program service and upon the public interest, convenience and necessity?

2. Was the Commission's order directed against appellants arbitrary, capricious and beyond its statutory authority with respect to the public interest importance of the service performed by KRLA in broadcasting the religious programs produced by appellants and with respect to the impact that the elimination of KRLA would have upon that service and upon the public interest, convenience and necessity?

II. Pursuant to the order of this Court, appellants will file their brief on or before January 28, 1963; appellee will file its brief on or before February 28, 1963. Appellants' reply brief, if any, and the Joint Appendix will be filed on or before March 15, 1963.

III. Reference to the record appearing in the various briefs of the parties may be to the page numbers of the record certified to the Court. In the printing of the Joint Appendix, there will be set forth, in addition to the consecutive numbering of the pages of the Joint Appendix, the original record page numbers in bold type and indented in a manner which will render it convenient for the Court to locate the pages referred to in the briefs.

Respectfully submitted,

IMMACULATE CONCEPTION CHURCH
OF LOS ANGELES, CALIFORNIA, AND
LAKE CONGREGATIONAL CHURCH OF
PASADENA, CALIFORNIA

By /s/ Harry P. Warner

Their Attorney
9350 Wilshire Boulevard
Suite 224
Beverly Hills, California

December 14, 1962.

[CERTIFICATE OF SERVICE]

APPELLEE'S STATEMENT OF ISSUES
IN CASE NO. 17,239

In accordance with the order of this Court dated December 7, 1962, the Federal Communications Commission, appellee herein, specifies the following issues in Case No. 17,239.

1. Was the Commission, in its order of July 24, 1962 denying the petitions of appellants for reconsideration and for oral argument, correct in its determination that it had already given adequate consideration to the religious programming offered by Station KRLA, and that oral argument and reconsideration on this point was unnecessary?

2. Was the Commission, in its order of July 24, 1962, correct in its determination that the religious programming offered by Station KRLA did not outweigh the considerations underlying the Commission's decision to deny the application of the Eleven Ten Broadcasting Corporation for the renewal of the license of Station KRLA?

3. Did the Commission, in its order of July 24, 1962, fail to make proper findings of fact and conclusions of law as required by the Communications Act of 1934, as amended, and Sections 7 and 8 of the Administrative Procedure Act, on all of the material issues?

The Commission agrees to the provisions set forth in Appellants' Statement of Issues with respect to pagination of record references in the briefs and the printing of the joint appendix.

Respectfully submitted,

/s/ Daniel R. Ohlbaum
Associate General Counsel

/s/ Ernest O. Eisenberg
Counsel

Federal Communications Commission
Washington 25, D. C.

2163 7 97
December 20, 1962

[CERTIFICATE OF SERVICE]

